

1 UNITED STATES DISTRICT COURT

2 CENTRAL DISTRICT OF CALIFORNIA

3 HONORABLE JOHN W. HOLCOMB, DISTRICT JUDGE

4 ENTROPIC COMMUNICATIONS, LLC,)

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5)

6 Plaintiff,)

)

7)

Vs.)

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8)

No. LACV23-01043-JWH

9 DISH NETWORK CORPORATION, ET AL.;)

LACV23-01050-JWH

COMCAST CORPORATION, ET AL.;)

LACV23-01049-JWH

10 COX COMMUNICATIONS, INC., ET AL;)

LACV23-01048-JWH

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Defendants.)

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16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 MOTION HEARING AND SCHEDULING CONFERENCE

18 SANTA ANA, CALIFORNIA

19 WEDNESDAY, AUGUST 9, 2023

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1 SANTA ANA, CALIFORNIA; WEDNESDAY, AUGUST 9, 2023; 10:09 A.M.

2 ---

3 THE CLERK: Calling item number one, Entropic case
4 versus DISH Network, 23-01043.

10:09AM

5 Calling item number two, Entropic Communications
6 versus Cox Communications, Inc., et al. Case number
7 LACV-23-01047.

8 Calling item number three, Entropic Communications,
9 LLC, versus Comcast Corporation, et al. Case number

10:09AM

10 23-01048.

11 Calling item number four, Entropic Communications
12 versus Cox Communications, Inc., et al. Case number
13 23-01049.

10:09AM

14 Calling item number five, case number 23-01050,
15 Entropic Communications, LLC, versus Comcast Corporation,
16 et al.

17 Counsel, if you would please state your appearance
18 for the record, beginning with plaintiff.

10:10AM

19 MR. SHIMOTA: Jim Shimota appearing on behalf of
20 plaintiff Entropic, LLC.

21 MS. GOODRICH: Christina Goodrich from K&L Gates on
22 behalf of plaintiff Entropic, LLC. I'm joined today by my
23 colleagues Ken Bridges and Nick Lenning, Cassidy Young, and
24 Kelsi Robinson, all on behalf of plaintiff.

10:10AM

25 I know Your Honor may be asking who is arguing

1 which motions. Mr. Bridges will be arguing the Comcast
2 motions. Mr. Shimota will be arguing the 101 motions. I'll
3 be handling the scheduling conference.

4 THE COURT: Got it. Okay. Good morning. Good to
10:10AM 5 see all of you.

6 Who wants to go next?

7 MR. MARCHESE: Good morning, Your Honor. Chris
8 Marchese from Fish & Richardson on behalf of the DISH
9 defendants.

10:10AM 10 THE COURT: Mr. Marchese, good morning.

11 MR. SHARTZER: Your Honor, Adam Shartzter of Fish &
12 Richardson also on behalf of the DISH defendants. With
13 respect to the argument today, Chris will argue the '566
14 patent for DISH. Then the '910 patent, I'll be arguing that
10:11AM 15 one today for DISH.

16 THE COURT: Got it. Okay. Good morning,
17 Mr. Shartzter.

18 MR. SHARTZER: Good morning, Your Honor.

19 MS. ISAACSON: Good morning, Your Honor. April
10:11AM 20 Isaacson from Kilpatrick Townsend on behalf of the Cox
21 defendants. Along with me is my colleague Chris Leah as well
22 as Michael Turton.

23 THE COURT: All right. Good morning, counsel.

24 MR. PADMANABHAN: Good morning, Your Honor.
10:11AM 25 Krishnan Padmanabhan, Winston & Strawn, on behalf of the

1 Comcast defendants.

2 THE COURT: Mr. Padmanabhan, talk into the
3 microphone and say that again.

4 MR. PADMANABHAN: I apologize.

10:11AM 5 THE COURT: That's okay. We just want to make sure
6 the record is complete.

7 MR. PADMANABHAN: Good morning, Your Honor.

8 THE COURT: Good morning.

9 Mr. PADMANABHAN: Krishnan Padmanabhan on behalf of
10:11AM 10 the Comcast -- now it's on.

11 Good morning, Your Honor. Krishnan Padmanabhan of
12 Winston & Strawn on behalf of the Comcast defendants. With
13 me I have Diana Leiden and Saranya Raghavan also of Winston &
14 Strawn. And we have a corporate representative, Mr. Kevin
10:12AM 15 Chung of Comcast.

16 THE COURT: All right. Good morning to all of you.
17 Thank you.

18 MR. SHARTZER: Your Honor, one moment, please. I
19 neglected to also introduce our corporate representative for
10:12AM 20 DISH as well. His name Mr. James Hanft. He's in the back
21 there.

22 THE COURT: All right. Welcome, sir. Good to see
23 you.

24 All right. I've got about two hours this
10:12AM 25 morning -- well, bleeding now into the afternoon, to deal

1 with all these matters. Here's what I'd like to do. Let's
2 spend about a half an hour on each motion, 15 minutes per
3 side arguing it.

4 Then in the time remaining we'll deal with the
10:12AM 5 scheduling conferences and set -- my hope is to set schedule
6 for the claim construction processes in each of the sets of
7 cases, the MoCA cases and the cable cases.

8 All right. Let's start, please, with the 101
9 motion in the 1043 case involving DISH. I have provided
10:13AM 10 counsel with tentatives on all three of these motions.
11 Anybody did not get the tentative or did not have time to
12 review it? Okay.

13 I'm looking for -- nobody is saying that he or she
14 did not receive it and did not have time to review it, so I'm
10:13AM 15 going to assume that you all received them and you've had
16 sufficient time to process them.

17 I know there are, well, 17 pages, 17 pages, and 13
18 pages. So they're not hideously long, but they're also not
19 -- they have some detail in them. I hope they're helpful.

10:14AM 20 I'll say what I always say when I have tentatives,
21 and that is that it's truly a tentative. Please push back
22 respectfully and tell me where I got it dead wrong. I want
23 to hear that. It's my object. It's my goal to get it right.

24 I think it makes sense on probably all of these
10:14AM 25 motions to start with the plaintiff. I think the plaintiff

1 is on the negative side of each tentative, at least in some
2 sense, so let me hear from plaintiff first. And as I said,
3 let's go -- let's plan to go about 15 minutes. I think you
4 can go pretty fast.

10:14AM 5 MR. SHIMOTA: I can, Your Honor.

6 THE COURT: Okay. In terms of my knowledge and
7 understanding of the patents, I think I have a pretty good
8 grasp, so you don't need to deal with kind of the big issues.

9 I didn't state that in a very clear way. You don't
10:15AM 10 need to start at ground zero, okay? Go ahead, please.

11 Mr. Shimota, you're going to --

12 MR. SHIMOTA: We provided you with our slide
13 presentation, Your Honor. I think we're having a little
14 trouble with the audiovisual equipment, so if I could hand
10:15AM 15 that up to you so I could just have some things you could
16 refer to.

17 THE COURT: Sure. I prefer the hard copy anyway.
18 What do I have here so far? I've got a Cox -- let's see.
19 K&L Gates has provided me with a couple of packets. I've got
10:15AM 20 Entropic's argument in opposition to Comcast's motion. Do I
21 have two copies of the same thing?

22 MS. GOODRICH: Your Honor, those are two separate
23 packets. I'll let Mr. Bridges explain when he argues that
24 motion.

10:15AM 25 THE COURT: Okay. I have four packets. They're

1 all different things. Mr. Shimota, you have something in
2 addition to all of that, correct?

3 MR. SHIMOTA: Yes. I have a slide presentation for
4 the DISH 101 motions.

10:16AM 5 THE COURT: Great. Can you hand that up, please.

6 MR. SHIMOTA: Your Honor, you have that.

7 THE COURT: It's one of these?

8 MR. SHIMOTA: Yes. If you want me to hand another
9 up, I can.

10:16AM 10 MR. MARCHESE: Your Honor, Chris Marchese for DISH.
11 We have our slides. May I bring them up?

12 THE COURT: Do I already have them?

13 MR. MARCHESE: No, you do not.

14 THE COURT: All right. My clerk will come get
10:16AM 15 them. And do you have a copy for my law clerk?

16 MR. MARCHESE: I do. I don't think I have
17 Entropic's on the 1043.

18 MR. SHIMOTA: I can just hand you a copy of mine.

19 MR. MARCHESE: Sorry about that, Your Honor.

10:17AM 20 THE COURT: That's okay. And give one to -- are
21 these the same, or these are different?

22 MR. SHIMOTA: Those are different, so you have the
23 DISH and the 1043 and the 1047, Your Honor.

24 THE COURT: Okay.

10:17AM 25 MR. SHIMOTA: And I believe opposing counsel has

1 copies as well.

2 THE COURT: Do you have a copy for my law clerk?

3 He's got it. Okay. All right. I'm looking at the
4 packet, the 1043. Is this what I'm supposed to have?

10:17AM

5 MR. SHIMOTA: Yes. Yes, you are, Your Honor.

6 THE COURT: Okay. I'm ready. Go ahead.

7 MR. SHIMOTA: Okay. So let's start with the 7'566

8 patent, Your Honor. I think in your opinion you do, you

9 know, fundamentally understand what's happening here. I

10:18AM

10 mean, this is one of the earlier MoCA patents, and you have
11 to put this into the frame of reference of what was being
12 done and what was Entropic, the original Entropic, working
13 on.

14 What did they come to when they invented and

10:18AM

15 pioneered MoCA? What they came to was what was a coaxial
16 cable network. We all had these in our homes. It's where
17 you got the original cable. You see that.

18 You can see, you know, a graphical, a picture of

19 that in Fig. 2 from 7'566. That's what is referred to in the

10:18AM

20 patent as the coaxial cable network. It's abbreviated as a
21 CCN. But what I think is important to keep in mind -- if you
22 can turn to slide three, Your Honor -- is, you know, it's not
23 just -- the patent just shows boxes, right?

24 What Entropic confronted at that time was basically

10:19AM

25 -- this is what a coaxial cable network was and is. It's a

1 messy, specific type of communication network. It's the
2 rat's nest that you see here. This is what kind of is in my
3 house behind my TV in a box. And there's splitters, and so
4 it's not an ideal communication medium.

10:19AM 5 As such, at the time people used it in a very
6 limited way for unidirectional communication to single boxes
7 which would be shown on television. This is the specific
8 network that Entropic encountered. And when they were
9 working to make a bidirectional network where you could have,
10:19AM 10 you know, communication, high-speed communication that would
11 enable whole home DVRs, they had to work with this.

12 Where I think your opinion gets -- well, at slides
13 4 and 5, just before I get to that, I think it's important,
14 too, to set the table in the patent in the complaint
10:20AM 15 particularly at the Rule 12 stage, and we lay this out in
16 detail.

17 And all the facts need to be found as true that
18 people recognize that MoCA, the industry recognized that MoCA
19 was a huge technological advance that enabled a large number
10:20AM 20 of, you know, things to be done that they didn't think that
21 could be done before. We have some quotes from the
22 defendants here, DISH and Cox, regarding that.

23 I think you need to -- you know, this is important
24 for you to set the table to understand what people thought
10:20AM 25 about what Entropic did to, you know, make MoCA in the

1 context of the '566 patent.

2 Why that context is important is -- if you could
3 turn to slide 7. This is frankly where I, you know --
4 respectfully, Your Honor, I do respect your opinion. But
10:20AM 5 where I do think that you got it wrong is that you didn't
6 focus -- you focused on the steps of the procedure, the
7 admission procedure into this network.

8 We're not stating that creating a network in and of
9 itself is something novel or new. What was important here
10:21AM 10 was that what was done and what was set up here was done in
11 the context of that rat's nest I showed you, the coaxial
12 cable network.

13 What these cases I point you to here on this slide,
14 the Uniloc opinion, the Maxell opinion, is that the Federal
10:21AM 15 Circuit and District Courts have repeatedly recognized where
16 there is a foundational improvement on an existing
17 communication network, that's all you need, Your Honor. That
18 takes it out of the realm of an abstract idea to a specific
19 idea.

10:21AM 20 And that's what we have here. If you focus simply
21 on that rat's nest that I showed you in the first picture,
22 that's enough to move on and say this is a -- you know, this
23 is a patentable invention. This is a specific, not-abstract,
24 invention, and I can move on. Then, you know, we can argue
10:22AM 25 about novelty and things like that.

1 That's what I want you to focus on here,
2 Your Honor. We don't even need to get to claim construction.
3 We have addressed that. But I think if you focus on that,
4 the inquiry is very simple, and I think that's a part that is
10:22AM 5 lacking from your opinion.

6 THE COURT: You mentioned -- what were the words
7 that you used? A foundational? It sounded like you were
8 quoting or paraphrasing a case.

9 MR. SHIMOTA: Well, that's my terminology. But if
10:22AM 10 you look in the Uniloc opinion, for example, what the Federal
11 Circuit specifically says there, is the claimed invention
12 changed the normal operation of the communication itself to
13 overcome a problem specifically arising in the realm of
14 computer networks.

10:22AM 15 So here the problem was, again, that there was the
16 rat's nest, right, of this coaxial cable network. So
17 you couldn't have the type -- the problem was you didn't have
18 the type of -- the ability to have the type of high-speed
19 communication, bidirectional communication, of that network.
10:23AM 20 You only had the rigid/flexible network communication.

21 What this patent does is it solves that problem in
22 a very specific way directed to that network, and that's
23 enough. You know, the Marble VOIP, VoiceOver IP, Partners
24 case that's from Kansas, that's a very similar decision where
10:23AM 25 there was an invention that was directed to an SIP-based VOIP

1 network.

2 There, too, the Court held that that -- that the
3 specific invention used in the context of that, that was
4 enough to hold that the patents were inventive and not
10:23AM 5 abstract. And they stopped there.

6 THE COURT: Okay. I understand your argument.

7 MR. SHIMOTA: And just moving ahead, in terms of
8 our -- you know, even if you move past that, Your Honor, our
9 claim constructions all take into account the fact that
10:24AM 10 you've got this existing CCN, and the point is that this
11 admission procedure which is set forth in the claims, all of
12 them are directed towards creating logical links between the
13 nodes in the coaxial cable network.

14 What we mean by logical links -- and you can see
10:24AM 15 that, for example, in slide 11 of our presentation, is that
16 there is a network, and that's going to be set forth in the
17 software, the Maclear software will set this up where you've
18 got the existing physical interconnections.

19 But the physical interconnections don't matter.
10:24AM 20 That's the existing infrastructure. Rather, these machines,
21 the controller itself will be setting up logical links. What
22 we mean by logical links, it's a mesh network then where the
23 presence doesn't matter, but then it's setting that up. And
24 that -- that logical link, that logical mesh which is
10:25AM 25 existing over the -- overlaying the physical infrastructure,

1 that too makes the invention even more specific. Right?

2 I mean, the logical links, that's going to be code
3 which is programmed into the controller, right. A computer
4 is just a machine with a processor, and it becomes specific.

10:25AM 5 This is where in the briefing you see some of this where they
6 keep talking about generic components, right.

7 Well, all computers are generic in the sense of
8 just being a computing device. They become specific when you
9 architect the software in a particular way. Once they're
10:25AM 10 programmed with particular software, then they become
11 specific machines. They're no longer just generic
12 components -- a transmitter, receiver, or processor. That's
13 what the case law means by generic components.

14 Once you talk about programming those components in
10:25AM 15 a very specific way, they become specific machines, else all
16 computer patents would be invalid and unpatentable, right,
17 because they're just processors that have code running on
18 them. And that's not the law. Obviously software patents
19 don't all go away.

10:26AM 20 So I think, you know, those are the points that I
21 want you to take with you, Your Honor. I don't want to
22 rehash the briefing. I want to keep -- be mindful of your
23 time. So I think if you focus on the fact that, again, that
24 rat's nest which was fundamentally transformed or, you know,
10:26AM 25 it solved -- what they've done here is solved a problem,

1 existing problem specific to CCNs. That's what's necessary
2 to hold that this claim is not abstract and is patentable.

3 You know, that, however -- you know, if you were to
4 even, you know, have doubt about this, I think then if you
10:26AM 5 looked, for example, to -- I can put it up on the elmo for
6 you -- some of the dependent claims of the patent.

7 THE COURT: I've got them right here in front of
8 me.

9 MR. SHIMOTA: Okay. Thank you -- to make it easy
10:27AM 10 on me.

11 If you looked at claim 2, for example, Your Honor,
12 claim 2 --

13 THE COURT: Okay.

14 MR. SHIMOTA: So claim 2 of the patent provides --
10:27AM 15 this would be asserted. You know, our complaint identified a
16 representative claim. The parties are going to talk today
17 about when infringement contentions come. But claim 2, for
18 example, recites: The communication circuit of claim 1 --

19 THE COURT: Slowly, please.

10:27AM 20 MR. SHIMOTA: Thank you -- wherein the controller
21 is operable to selectively operate as a network controller
22 node of the CCN or a non-network controller node of the CCN.
23 What you see there, Your Honor, is it's making more specific
24 this mesh network that we're talking about.

10:27AM 25 The fact that in this network the specific devices

1 have software in them that enables oftentimes it's the first
2 node connected in the CCN, but it can be others as necessary
3 to optimize the network where you can have a different
4 set-top box, for example, acting as the controller in that
5 network, in the CCN. This is what we see there on the
6 screen, that mesh sitting on top of the physical CCN.

7 So that is another -- you know, even if you had any
8 doubts about claim 1, claim 2 as an example is one where it
9 gets very specifically at the innovation and the invention of
10 this patent, and that's one, too, where I think you should,
11 you know, just hold that the claims frankly reverse your
12 tentative ruling and issue a final ruling that these claims
13 are patentable and let this claim move forward.

14 THE COURT: The Fig. 8, the concepts that are
15 displayed pictorially there, how are they fleshed out in
16 claim 1?

17 MR. SHIMOTA: Uh-huh. Well, I mean, our
18 constructions provide for the fact that, you know, what's
19 going on there is, you know, that our constructions refer to
20 a logical link. But again, I mean, what is fleshed out in
21 claim 1 --

22 THE COURT: Hold on. Let me look at your
23 construction.

24 MR. SHIMOTA: Now if I could direct your attention
25 to page 13 of our presentation, Your Honor.

1 THE COURT: Should I look there instead of your
2 supplemental brief?

3 MR. SHIMOTA: Either one is fine, but that's, you
4 know, where -- as an example.

10:29AM

5 THE COURT: I'm on your page 13 of your
6 demonstrative.

7 MR. SHIMOTA: Sure. So for this limitation, if the
8 received admission request message is correctly received and
9 the new node is authorized to join the CCN, perform an
10 admission procedure with the new node.

10:30AM

11 So what we've proposed as a construction for that
12 element -- and our briefing lays out why the intrinsic record
13 supports it -- is establishing a logical communication link
14 between the controller node and the new node over the
15 existing CCN physical connections.

10:30AM

16 Again, when we're talking about the logical
17 communication link, that is the mesh network that overlays
18 the existing network, that rat's nest, right. So all these
19 set-top boxes are now able to communicate bidirectionally
20 with each other in this logical mesh network over that
21 existing CCN in a way that could not be done before.

10:30AM

22 That was a problem, right? Many people -- that was
23 a problem. The patent lays out there was a problem
24 recognized by the industry. Our complaint specifies that
25 problem in great factual detail, and that's why looking at

10:30AM

1 the Uniloc case and others like it, we think that the '566
2 patent clearly passes muster as patent eligible subject
3 matter.

4 THE COURT: Okay. Thank you. I'm going to think
10:31AM 5 about all those things.

6 MR. SHIMOTA: Would you like me to move on to the
7 '910 patent? I know that DISH has -- they're splitting up
8 the argument. So I don't know if you'd prefer to hear from
9 DISH on the '566 or have me keep rolling.

10:31AM 10 THE COURT: No. Keep rolling, please.

11 MR. SHIMOTA: Okay. Thank you, Your Honor.

12 So turning next to the '910 patent. On our slide
13 presentation it starts at page 19.

14 THE COURT: Okay. I'm there.

10:31AM 15 MR. SHIMOTA: On page 20 you see the claim which
16 DISH has chosen to focus on. This is the one that we
17 identified in our complaint as a representative claim,
18 although at the end I will discuss for you why I don't think
19 your ruling appropriately holds that claims 1 and 2 are
10:32AM 20 representative -- or that claim 3 is representative of
21 claims 1 and 2. But I'll start with claim 3 first because
22 that's how the briefing proceeded.

23 The -- I think your opinion understands this, too,
24 as well, you know, what's happening here. So where just
10:32AM 25 getting to, you know, the meat of it, I think where your

1 opinion goes wrong again is that it says that, you know, the
2 patent doesn't describe the how of what is inventive.

3 Respectfully we disagree. The result of the patent
4 is increased bandwidth, right. You can see that. I'll
10:32AM 5 direct you to -- so slide 30 of the patent, you know,
6 provides a quote from the specification. It describes how
7 that, you know, when you needed to have headers, which
8 included, you know, information such as the destination
9 addresses for packets, doing that on a packet-by-packet basis
10:33AM 10 -- and let me direct you to -- I'm sorry. Our slide
11 neglected to include the precise pin cite, Your Honor, but
12 I'll direct you to that.

13 That quotation comes from column one, starting at
14 line 30 through line 37. So the result of the invention here
10:33AM 15 is increased bandwidth, right. You're not -- you know,
16 rather it's saying that in the prior art there would have
17 been headers which included for each packet a destination
18 address for it.

19 The way that this problem, that this patent solves
10:33AM 20 this, is with a specific way. The how. There is a specific
21 how, and it's using packet aggregation where there's an
22 aggregation header which includes the destination address.

23 That allows packets to be aggregated based on the
24 destination address such that they can then be transmitted
10:34AM 25 and there can be increased bandwidth. That's the specific

1 how. And that's contrasted with -- you see in our briefing
2 where you have got the Rajan reference, which was cited in
3 the prior art.

4 That was -- that was concatenation, which we're not
10:34AM 5 suggesting that we invented. Concatenation, that existed
6 before I won -- I was a Mr. Grand Rapids spelling bee once.

7 THE COURT: I was impressed with the -- I don't
8 think I could have spelled that one.

9 MR. SHIMOTA: I'll pat myself on the back for that
10:34AM 10 one.

11 But we don't suggest that we've invented
12 aggregation or concatenation. What was happening there is
13 the difference in those patents is that what's going on is
14 you're aggregating based on the type of data. Is it a
10:35AM 15 realtime? Is it streaming data, or is it a file transfer?

16 So if it's a high-priority data, you're -- you're
17 aggregating or concatenating on the basis of that. But what
18 that reference is very clear on -- and you can turn to
19 page 25 of our slide presentation, for example. And we point
10:35AM 20 to this in our briefing.

21 What was happening in Rajan is it's aggregation
22 done at a different layer of the OSI model. It's, you know,
23 it's above layer two. It's the internet protocol, which is
24 probably typically layer three. What's being done there is
10:35AM 25 so there isn't -- at that point, at that layer of the

1 software protocol stack, there's no knowledge about the
2 destination address. Rather, they can only look at it in
3 terms of the type of data.

4 So, you know, it just shows that here and in that
10:36AM 5 example, too, the patent -- the Rajan reference is very clear
6 that the destination addresses need to be reprocessed later.
7 They're stored and then they're later extracted to show where
8 these packets need to go. So this prior art is not solving
9 the problem addressed by our patent.

10:36AM 10 So again, the how here is a layer two. It's
11 basically something done at the MoCA, the MAC layer where the
12 destination of packets are relevant. It's aggregation done
13 at that level, and layer two again is -- something programmed
14 at layer two makes it a specific machine such that -- and
10:36AM 15 that's the advance, right, that's done in a very specific way
16 which takes it out of the -- you know, makes it an inventive
17 or, excuse me, a not-abstract idea.

18 The case that I would direct you to would be the --
19 this is at slide 32 -- Adasa, Inc., versus Avery Dennison
10:37AM 20 Corp. case at 55 F.4th, 900, pin cite 908 to 909. In that
21 case the Federal Circuit found that if there was a data
22 structure that yielded important technological consequences,
23 then that's not an abstract idea.

24 Here this is a specific data structure. It's one
10:37AM 25 that identifies, you know, allows the data structure in which

1 a particular header includes a destination address which is
2 used for aggregation of MoCA or MAC packets, which are
3 ultimately sent to the same address. The technological
4 advance there is increased bandwidth data. The pipe flows
5 faster.

6 So again if you look to that case and look to what
7 we've shown, that again this is a patent that is -- again
8 easily passes muster as patentable.

9 The last point I wanted to make is that, you know,
10 even if there was any doubt, with due respect if you could
11 just look at the patent claims 1 and 2 versus 3, and we have
12 claim 1 at slide 33. That's easier to reference.

13 THE COURT: Okay.

14 MR. SHIMOTA: What you see in claim 1 in contrast
15 to claim 3 is that claim 1 has two parts. The first part
16 refers to the packet aggregation module and aggregation and
17 the process we've talked about.

18 As DISH acknowledges, I believe, the second part,
19 there's a whole second part after where it says further
20 comprising in claim 1 that talks about the use of checksums
21 for error correction.

22 In its briefing DISH says, well, checksums were
23 well known. There's a well-known method of error correction.
24 Perhaps that's true, but if you look at claim 1, it's a very
25 specific use of checksums.

1 For example, there's a checksum bit which is kept
2 in the MAC header. It could be in the aggregation header,
3 but it's specifically put in the MAC header in this
4 situation, and it's used in a specific way for error
5 correction.

6 So the only thing that DISH says in its briefing is
7 that checksums were known, so just sort of poo-poo and push
8 aside claims 1 and 2. They've got the burden of proof here,
9 right? There's no analysis in their briefing whatsoever
10 going through element by element and showing that the
11 specific use of checksums in these claims and the specific
12 way it's done for error correction is an abstract idea and
13 it's lacking an inventive concept.

14 They just basically say checksums were known, so
15 that's enough. It's not. They need to prove that by clear
16 and convincing evidence.

17 So I think you should hold that claim 3 is
18 patentable. But even if you have any doubt, respectfully I
19 think you should change your opinion as to claims 1 and 2,
20 Your Honor.

21 THE COURT: Okay. I think I understand your
22 argument.

23 MR. SHIMOTA: Thank you very much for your time,
24 Your Honor.

25 THE COURT: Thank you very much.

1 All right. Mr. Marchese.

2 MR. MARCHESE: Yes, Your Honor. Good morning once
3 again.

4 THE COURT: Yes.

10:40AM

5 MR. MARCHESE: First I just want to say that I'm
6 here to argue on the '566 patent. I'll call it that instead
7 of 7'566, I think, for simplicity. We agree with
8 Your Honor's tentative. We believe you got it right, but I
9 would like to respond to some of the points that Mr. Shimota
10 made.

10:41AM

11 The first thing he said is that the order focused
12 on the steps, but we would respectfully disagree with that.
13 The steps, true, there was no rebuttal by Mr. Shimota that
14 the steps and the functions in the claims of this '566 patent
15 are generic and routine.

10:41AM

16 We have things like admission, authentication,
17 probing, and adapting. They're all done -- this is critical.
18 They're all performed by generic computer components, things
19 like a node, a communication circuit.

10:41AM

20 Now, he mentioned something about how you couldn't
21 have a patentable computer patent. I think he backed away
22 from that a little bit and said that, you know, they need to
23 be programmed in a specific way. The Federal Circuit has
24 recognized that.

10:41AM

25 We don't have that here. The most we have in a

1 specific way, we don't have an implementation that's recited
2 in these claim that is an improvement or non-convention.
3 What we have is, like I said before, generalized steps like
4 authentication, admission, probing, and adapting. And
5 they're all performed on these very generic computer
6 components that are not programmed in a specific way.

7 This is not like the IOENGINE case that you
8 distinguished in the tentative order. This is not a case
9 where you have a set of memories arranged in a particular way
10 that performs specific things and are programmed in a
11 specific way. This is very generic material both at the
12 functional and structural level.

13 Now, Mr. Shimota mentioned something about
14 foundational improvements in existing networks. What I would
15 like to point the Court to would be the last slide in our
16 slide deck, which is slide number 53. There's a case cited
17 there. It's the Trading Technologies, the IBG case from the
18 Federal Circuit in 2019.

19 THE COURT: Hold on. One second. Let me get
20 there.

21 MR. MARCHESE: Okay.

22 THE COURT: The last slide in your deck?

23 MR. MARCHESE: The very last one, Your Honor.

24 THE COURT: 53?

25 MR. MARCHESE: Correct.

1 THE COURT: Okay. I'm there.

2 MR. MARCHESE: That case says -- and we have the
3 quote in the slide: The abstract idea itself cannot supply
4 the inventive concept no matter how groundbreaking the
5 advance.

6 To the extent that Entropic argues that this laying
7 the logical link on top of the physical network is
8 groundbreaking, that's up to them to prove. It doesn't
9 matter here because these are abstract concepts. You're
10 laying a logical link on top of a physical network, which is
11 admittedly old. The cable coaxial network, the rat's nest
12 that was shown, that is old. We all agree on that.

13 Now, I'd like to just briefly give you a little
14 overview of why we think your ruling is correct as it makes
15 some important points along the way. The key point here,
16 Your Honor, is that the -- and the Federal Circuit has said
17 this again and again -- that Section 101 has to be measured
18 against the claims.

19 Now, we see from Entropic arguing in their briefing
20 and we heard some argument about this today that there's all
21 these wonderful things that are going on with this particular
22 MoCA network. It's described in great detail in the patent.
23 It's 25 columns. There's, like, 18 pages' worth of figures.

24 The problem is it's not claimed. This patent
25 claims an abstract idea. You have only two nodes. We heard

1 -- we see in the briefing a lot of argument about
2 peer-to-peer networks and how you can have the transmission
3 parameters adapt so you can kind of customize the connection.

4 Mr. Shimota argued about the various physical
5 components along the lines that degrade the splitters.

6 There's argument about a multitude of cables. None of that
7 is in the claim. None of that is in the claim.

8 THE COURT: So there are, what, 12 patents in suit
9 in these cases?

10 MR. MARCHESE: Yes, Your Honor.

11 THE COURT: Are those concepts claimed in one of
12 the subsequent patents?

13 MR. MARCHESE: I don't know that I can make that
14 representation, but I do know that this patent, the '566
15 patent, stems from a long line of patents. In fact, Entropic
16 submitted with its supplemental briefing a set of office
17 action responses that were made in prior patents in this
18 chain.

19 If you look on the first page on the '566 patent,
20 you'll see that it stemmed from a long line of patent
21 applications. You've got four patents issued before it.
22 It's quite possible that those patents recite the sorts of
23 things that Entropic would like to have here in the '566
24 patent, but the problem is they're just not there.

25 So what we have to be cognizant of is that the

1 specification -- the Federal Circuit has instructed on
2 this -- cannot be used to import details into the claims if
3 they're not claimed.

4 So all of these features, all of these benefits
10:46AM 5 that are purported and alleged, they're just not there. We
6 have the controller, which is part of a communication
7 circuit. It communicates with a new node. That's one node
8 on one side and one on the other. That's not a mesh network.
9 There's nothing in the claims about splitters and all these
10:46AM 10 other features of the coaxial network. There's no rat's nest
11 recited that they're overcoming. None of that is there.

12 What we see, as the Federal Circuit said in the
13 ChargePoint case, even if the specification is full of
14 details about the physical invention, it may still conclude
10:46AM 15 with claims that are nothing more than the abstract idea
16 underlying the claims.

17 That's the case here. As I've said, lots of pages
18 of specification, lots of figures, none of it -- well, very
19 little of it made it into the claims, what made it as
10:47AM 20 abstract.

21 THE COURT: Okay. I think I understand your
22 argument.

23 MR. MARCHESE: Okay. Thank you, Your Honor.

24 If I may briefly respond to a couple points. I
10:47AM 25 think one of the problems that we specified in our briefing

1 was that the first construction about the adapting -- excuse
2 me. Not the adapting. Let me just go to the claim
3 constructions here.

4 If you look at slide number 5, these are the three
5 constructions.

6 THE COURT: Yes.

7 MR. MARCHESE: The perform and admission procedure
8 is a function. The Court in Sanderling, the Federal Circuit,
9 said that constructions must be plausible. We submit this is
10 an implausible construction because it imports structural
11 limitations to a pure functional feature. It should be
12 disregarded.

13 But even if it's not, it is reciting very abstract
14 principles between two nodes, logical link on top of physical
15 connections. It's abstract, and the abstract feature cannot
16 supply the inventive concept.

17 Similarly, if you take the other two constructions
18 and you plug them into the claim, they don't fit. If you
19 went through that exercise and you substituted their
20 construction for probe or communication link, adapt
21 transmission parameters, they don't fit. They become
22 circular. So their constructions are not plausible. But in
23 any case, they are truly abstract. There's no inventive
24 concept.

25 And last I wanted to -- well, two things. Excuse

1 me. As to the dependent claims, we agree with Your Honor.
2 We believe that they just add bells and whistles to the
3 general abstract concept, including claim 2.

4 I would like to just direct the Court to Fig. 8
10:48AM 5 that Mr. Shimota showed. It is reproduced in our slides at
6 slide 19. Slide 19 shows Fig. 8. There's all these --
7 there's four nodes there, the red lines having been drawn on
8 there by Entropic in its briefing. There's a lot of argument
9 about how they're creating a peer-to-peer network. It's a
10:49AM 10 mesh and you've got -- it overcomes all these problems.
11 That's not in the claim.

12 The claim is just a node A and a node B. So all of
13 the considerations around these particular mesh networks as
14 shown in Fig. 8 are just not present in this claim.

10:49AM 15 I think what we have here is a situation where
16 Entropic laid claim to a very generic, very abstract system.
17 It does not include a lot of the features that they would
18 like it to include now, and they're trying to revise history
19 and build a much narrower, much more detailed claim, and it
10:49AM 20 just doesn't work.

21 With that, Your Honor, I'll close, unless you have
22 any questions.

23 THE COURT: No, not right now. Thank you. I
24 understand your argument.

10:50AM 25 MR. MARCHESE: Thank you.

1 THE COURT: Okay. Mr. Shartzter, you want to cover
2 '910?

3 MR. SHARTZER: Yes, Your Honor.

4 Good morning, Your Honor. I'll take you to
10:50AM 5 slide 44 in our slide deck to start.

6 THE COURT: I'm there.

7 MR. SHARTZER: Okay. All right.

8 We obviously agree with the conclusions,
9 Your Honor, in your tentative with respect to the '910

10:50AM 10 patent. I did however want to at least point the Court to
11 one area where I would expect that if there were an appeal on
12 the '910 patent on this decision, that Entropic and
13 Mr. Shimota would take to the Federal Circuit, it would be
14 that the second to last sentence above subsection C which
10:50AM 15 states: The Court need not separately address step two --

16 THE COURT: Hold on a second. You're talking about
17 my tentative?

18 MR. SHARTZER: Yes, your tentative at page 17.

19 THE COURT: I'm there. Okay.

10:51AM 20 MR. SHARTZER: Okay. About the middle of the page,
21 it's the second to last sentence before subsection C.

22 THE COURT: I see it.

23 MR. SHARTZER: It says: The Court need not
24 separately address step two given that the claims fail to
10:51AM 25 explain how to accomplish the claimed result.

1 I would expect that Entropic would appeal on that
2 statement alone, arguing that Your Honor had not performed a
3 proper step-two analysis, certainly the question of how and
4 whether how to achieve the claimed function is part of the
10:51AM 5 step-two analysis.

6 Then, of course, there are aspects of the step-two
7 analysis that go into whether or not the claims also require
8 or claim an inventive concept or something more that saves
9 the claims from abstractness at step one.

10:51AM 10 So with that, I'd like to then point you to -- I'm
11 sorry, slide 44. Actually we can go to slide 45, because I
12 think much of whatever Entropic might appeal on this point is
13 addressed by its admissions in its own briefing where it
14 stated that its claim satisfy Alice step two because the
10:52AM 15 specification explains how the claim system improves upon a
16 communication network.

17 Obviously we can't rely on the specification to
18 import the claims or import limitations into the claims for
19 purposes of satisfying step two. The focus still remains
10:52AM 20 upon the claims, and the claim language or the specification
21 must yield to the claim language whenever we're doing that
22 step-two analysis.

23 If I turn you to slide 46, Your Honor, there were
24 arguments in Entropic's briefing that they're aggregating
10:52AM 25 MoCA patents. They point to Fig. 3. In their specification

1 Fig. 3 is a prior-art figure, and the word MoCA or phrase
2 MoCA packets doesn't appear in the claims themselves.

3 They point to Fig. 4. They point to an embodiment
4 of an aggregated payload, but that specific structure is
10:53AM 5 neither in the claims nor in the proposed constructions here
6 as well at step two.

7 Turning to slide 47. Another argument that
8 Entropic raises is that the use of destination information
9 for aggregation purposes is a particular technological
10:53AM 10 improvement. Your Honor, the use of destination information
11 is part of the aggregation step. That destination
12 information is just being used as part of the abstract
13 concept of aggregation. Right.

14 THE COURT: Say that one more time. Sorry.

10:53AM 15 MR. SHARTZER: So destination information as it's
16 being used in the concept for aggregation is simply using
17 destination information for purposes of the aggregation step,
18 which is the abstract idea. That destination information is
19 part of the abstract idea.

10:54AM 20 It's also part of the abstract idea of sending or
21 transmitting data. You need a destination information in
22 order to transmit. So you cannot use the abstract idea to
23 supply the inventive concept at step two, and the Federal
24 Circuit's cases are fairly clear and resolute on that point.

10:54AM 25 Mr. Shimota mentioned in his argument that the

1 claims result in increased bandwidth through aggregation.
2 The idea of increasing bandwidth or making available more
3 bandwidth in the system is also abstract.

4 It doesn't appear in the Court's tentative, but I
10:54AM 5 would point the Court to the Hawk Technology case from the
6 Federal Circuit. The pin cite is 60 F.4th, 1349. And
7 specifically the pin cite would go to page 1358 of that
8 decision. In that decision the Federal Circuit says that the
9 data manipulation is an abstract concept. It's an abstract
10:55AM 10 idea. And simply, data manipulation for purposes of
11 preserving bandwidth is also abstract and not a patent
12 eligible concept.

13 So I think in the context of Mr. Shimota's argument
14 today, that is certainly an important case that the Court can
10:55AM 15 also rely upon.

16 Mr. Shimota also talked about aggregating, and he
17 mentioned high-priority packets, aggregating based upon
18 high-priority packets or aggregating based upon different
19 layers of the OSI model. I'm sure the Court is aware those
10:55AM 20 concepts of high-priority data packets and aggregating based
21 upon different layers of the OSI model are not in the actual
22 representative claim 3, so they cannot supply the
23 unconventional aspect of the claims that we're looking for at
24 step two.

10:56AM 25 I'll next turn the Court to slide 49, which

1 addresses the claim construction. The tentative adequately
2 captures the fact that the claim construction of packet
3 aggregation module is just a reformulation of the surrounding
4 claim language, but it doesn't really add anything to the
10:56AM 5 claim itself or define the claim in any other way than the
6 claim language itself.

7 At slide 50 I'll point the Court to Entropic's
8 construction of forming an aggregate packet. In forming an
9 aggregate packet, there's essentially two requirements
10:56AM 10 imposed there. One is that there be a single header. The
11 second is that the aggregate payload is formed from the
12 plurality of packet data units.

13 The concept of a single header is obviously
14 conventional. It's admitted in the patent specification
10:57AM 15 itself. If you turn to slide 51, there at Fig. 3 we snip
16 from the patent the full figure which actually shows the
17 Ethernet packets as well, including a single header in each
18 of the Ethernet packets. And the specification admits that
19 at column 3, lines 49 through 52.

10:57AM 20 The other problem with this claim construction,
21 Your Honor, is that it is inconsistent with the claim
22 language in claim 1. So while the claim construction -- if
23 you turn to slide 52, this is where we show this. If you
24 turn -- the claim construction requires that the aggregated
10:57AM 25 packet comprises a single header.

1 In claim 1 we have two different kinds of headers
2 that are required, both an aggregation header as well as a
3 media access control header. So it's not even a plausible
4 construction that has been raised here.

10:58AM

5 Turning to slide 53, there is also an argument by
6 Entropic that the second requirement of forming an aggregate
7 packet is somehow inventive. But again, having an
8 aggregating multiple packets, that's inherent in the word
9 itself essentially, Your Honor. Aggregation necessarily
10 implies that there is going to be more packets, and
11 aggregation is part of the abstract concept. Again, the
12 abstract concept cannot supply the inventiveness required at
13 step two.

10:58AM

14 There were arguments about Adasa. I could turn the
15 Court to slide 34 in our deck, but that's a very different
16 case, Your Honor. With that particular case the claim there
17 requires actual structure. So it's an apparatus claim as
18 opposed to a system claim here or method claims -- for
19 example, claim 1.

10:58AM

10:59AM

20 The RFID transponder is hard apparatus and it has
21 various structures included, but then it also has a very
22 unconventional data structure that was being used in an
23 unconventional way. The problem there was that RFID tags
24 need to be commissioned one by one with a connection to a
25 server.

10:59AM

1 The Adasa inventors found a way to avoid needing
2 that connection where they could commission up to
3 16.8 million individual RFID transponders without ever
4 connecting to the commissioning central server.

10:59AM 5 That was the ultimate point of Adasa, that this was
6 doing something very different and it was not abstract idea.
7 The invention and the unconventional nature of that invention
8 was included in the claims itself in contrast to
9 representative claim here.

10:59AM 10 Then lastly, Your Honor, I want to address the
11 checksum point of Mr. Shimota's argument. He blames DISH for
12 having not met its burden. It's true that DISH has the
13 burden here, but DISH opened its brief addressing also the
14 checksums issue.

11:00AM 15 It's in one of the footnotes of our brief, and I
16 can point the Court if the Court needs the exact pin cite
17 there. Essentially what we pointed out is the use of
18 checksums to ensure accurate data, was not using checksums in
19 any unconventional way.

11:00AM 20 THE COURT: Where do you -- I'm looking at your
21 corrected opposition. ECF 58, I believe, 58-1.

22 MR. SHARTZER: We are at -- let me find the right
23 footnote, Your Honor. It's footnote six. It's at ECF 50-1.

24 THE COURT: Okay. So what I printed out was the
11:01AM 25 corrected opposition is 50, the --

1 MR. SHARTZER: 50 was DISH's moving brief. It was
2 the original motion to dismiss.

3 THE COURT: Oh, oh, oh. I'm sorry. I'm on the
4 wrong -- I'm on the opposition. My mistake. Okay. Footnote
5 six. What page?

6 MR. SHARTZER: Page 21 of that brief.

7 THE COURT: I'm there. Okay.

8 MR. SHARTZER: So --

9 THE COURT: Now I'm with you.

10 MR. SHARTZER: -- footnote six is where we really
11 engage with respect to the checksums, claims 1 and 2 and
12 their use, and that they don't add anything more or take
13 claims 1 and 2 out of this idea of being anything but
14 representative.

15 If we were to engage further -- and Entropic did
16 not. When Entropic opposed, it put the claims into its
17 brief, but it didn't say substantively why the differences in
18 the claims matter to the representativeness analysis. So
19 essentially the briefing on the record ends there, and then
20 we had Mr. Shimota's argument today.

21 So I do want to address it, but using checksums to
22 perform some sort of data integrity function is itself an
23 abstract idea. It essentially says do some math. There's
24 nothing about the use of a checksum here at step two, which
25 would be unconventional in terms of its use in the context of

1 these claims.

2 I'll point the Court to a case that is relevant on
3 the point in the issue of using checksums and being abstract.
4 It's the Intellectual Ventures case, Intellectual Ventures
11:02AM 5 versus Erie. The pin cite is 711, Fed. App'x 1012.

6 Of course, that is a non-precedential decision, but
7 if the Court looks at -- let me give you the issue date as
8 well. That issued from the Federal Circuit on November 3rd,
9 2017.

11:03AM 10 If the Court looks to footnote two of the
11 Intellectual Ventures decision, that's where the Court deals
12 with what were dependent claims at the time that introduce
13 the idea of checksums. The Court says that doesn't change
14 the analysis with respect to abstractness.

11:03AM 15 The Court also cites a precedential decision, and
16 certainly we want to make sure we get your precedential
17 decision to cite, and that's the BuySafe, Inc., versus Google
18 decision, which is found at 765 F.3d 1350. The pin cite is
19 1355. That was issued by the Federal Circuit in 2014.

11:03AM 20 So unless there are further questions from the
21 Court...

22 THE COURT: Just as a quick aside, who represented
23 Intellectual Ventures in that Federal Appendix case that you
24 cited?

11:04AM 25 MR. SHARTZER: Your Honor, I have it up on my

1 computer. I could find it for you.

2 THE COURT: I'm just curious. It doesn't matter
3 for the purposes of what we're doing here today.

4 MR. SHARTZER: Well, let's make sure we get a
5 complete record. How about that?

6 (Brief pause in proceedings)

7 MR. SHARTZER: Sometimes my own firm doesn't want
8 to let me log in to my laptop.

9 THE COURT: Well, I can get it later.

10 Does Entropic want to have a really quick minute?

11 MR. SHIMOTA: Two minutes. I can do it in a
12 minute, Your Honor, and then I'll move on to the Cox issues.
13 Is that okay, Your Honor?

14 THE COURT: Yeah -- a little slower.

15 MR. SHIMOTA: So I'll go in reverse order so it's
16 fresh in your mind. I think you probably have handy DISH's
17 motion papers on the '101 and the '910.

18 THE COURT: I do.

19 MR. SHIMOTA: And footnote six at page 50.

20 THE COURT: I'm there. Page 21?

21 MR. SHIMOTA: That's right, Your Honor.

22 Mr. Shartzer directed you and said if you don't get to step
23 two, you're going to get reversed on appeal by the Federal
24 Circuit. It's nice of him.

25 If you look at footnote six, that's directed to

1 Alice step one, right. We disagree with the analysis there
2 and the fact that -- you know, the checksums. But that's
3 dealing with Alice step one.

4 There's absolutely zero, zero analysis at Alice
11:05AM 5 step two for claims 1 and 2. You can see it right there. So
6 just based on that -- I thank Mr. Shartzter for that -- you
7 should just deny the motion as a matter of course on claims 1
8 and 2. We don't think they're representative.

9 Turning to the '566 patent, Mr. Marchese said
11:05AM 10 there's no rat's nest at all in claim 1. Well, yes, there
11 is. It's the CCN, the coaxial cable network. That's the
12 picture I showed you. That's the rat's nest, and that's
13 where the unique solution was applied to that.

14 And he said there's no mesh network? Well, we
11:06AM 15 think there is, but it's in our claim construction. But even
16 if there's any doubt, it's certainly in claim 2. It's
17 certainly in claim 2, Your Honor. And they seem to concede
18 that the mesh network is -- you know, takes it out of the
19 realm of being an abstract idea. So at a minimum I think
11:06AM 20 your opinion should hold that.

21 I think that was a minute, so...

22 THE COURT: Good. Thank you. That -- I think I
23 understand your argument.

24 MR. SHIMOTA: Okay. Thank you, Your Honor.

11:06AM 25 MR. SHARTZER: Your Honor, would you like that firm

1 name?

2 THE COURT: Yes.

3 MR. SHARTZER: That was Nix Patterson & Roach who
4 represented Intellectual Ventures in that case.

11:06AM 5 THE COURT: Okay. Thank you.

6 All right. We're a little bit behind where I hoped
7 that we would be. Let's move on to the 1047 case, Cox's
8 motion under Rule 12(c). And likewise, let me hear from
9 Entropic first.

11:07AM 10 MR. SHIMOTA: I'll try to keep this one even faster
11 so we get back on track, Your Honor.

12 We start the presentation but I won't go back
13 through it again. I think just laying the table for you that
14 there are some quotes from Cox regarding the inventiveness of
11:07AM 15 MoCA as a whole. And I think you should take that --

16 THE COURT: Forgive me --

17 MR. SHIMOTA: -- we've already talked about that.

18 THE COURT: Forgive me for interrupting you. This
19 presentation?

11:07AM 20 MR. SHIMOTA: My eyes are terrible.

21 THE COURT: Well, does it look like this?

22 MR. SHIMOTA: Yeah, it looks like this, but, I
23 mean, the other one looked like it, too. So...

24 THE COURT: I've got it.

11:07AM 25 MR. SHIMOTA: Sorry for my old eyes. I'll do the

1 best I can.

2 So these are two related patents, so we can handle
3 them together. And, you know, the concept here is quality of
4 service as in the MoCA network. At this point MoCA had
11:08AM 5 already been invented. The patent is very clear about that.
6 The standard -- you know, earlier versions of it had already
7 been promulgated. So the concept here is a -- if you can
8 turn to slide 7 -- is what's described in the patent as a
9 smart network coordinator that operates as a peer at layer
11:08AM 10 two. That's where MoCA lives, at layer two, and layer one
11 and its managing quality of service.

12 Specifically, if you turn next to slide 6 of the
13 presentation, we have the claims. You see there the claims.
14 And what's happening with the claims is that there is, you
11:08AM 15 know, it's not just --

16 THE COURT: Sorry. Slide?

17 MR. SHIMOTA: Sorry. It's slide 8. I'm sorry.

18 THE COURT: Okay. I went backwards to 6.

19 MR. SHIMOTA: I apologize, Your Honor.

11:08AM 20 THE COURT: I'm on 8. Go ahead.

21 MR. SHIMOTA: So here are the claims. And what
22 you've got here is, I mean, these are very long, detailed
23 claims. So what's described there just even before we turn
24 to claim construction, which respectfully I'll get to and I
11:09AM 25 think this is where you erred in your opinion, your tentative

1 order, Your Honor.

2 Nevertheless, even if you don't get to the claim
3 construction, there's a very specific method here described
4 in both apparatus and system claims for managing QoS by the
11:09AM 5 network coordinator. So it's not -- so your opinion, you
6 know, points out that we make a point that these patents
7 arose from a very, very lengthy prosecution history. You
8 said that we missed the mark because the prosecution history
9 doesn't tie to our claim construction.

11:09AM 10 You know, perhaps that was a problem in our
11 briefing, so I want to be very clear of what we're arguing
12 there. The claim construction flows from the fact that the
13 patentee acted as its own lexicographer.

14 It's a separate argument for the prosecution
11:10AM 15 history. The prosecution history and the length of it is to
16 point you to that the -- it may well have been -- it is the
17 fact that QoS is an abstract idea in and of itself, but the
18 length of the prosecution history shows that the examiner put
19 Entropic to -- really put it to Entropic. They made them get
11:10AM 20 very, very narrow and specific in terms of the way in which
21 the QoS is performed. It's tied very closely to the
22 preferred embodiment in the patent.

23 If you turn to slide 11, I just want to make the
24 point clear here that Cox points to Judge Kronstadt's opinion
11:10AM 25 in the Virtual Immersion Technologies case and said that, you

1 know, the prosecution history doesn't matter.

2 I think we're talking past each other there. In
3 the Virtual Immersion case it was simply just basically
4 presenting real and virtual data on a TV. And he cited
11:11AM 5 that -- what Judge Kronstadt said is there is no description
6 of the particular way that this, you know, benefit is being
7 achieved.

8 Well, the benefit is improved quality of service,
9 right, and the claims do describe in a very particular way
11:11AM 10 how that is achieved. So that's the distinction, and that's
11 what came about in the prosecution history is that these
12 claims are very specific in the way that the QoS is performed
13 such that it's not abstract at all. And that's the
14 difference.

11:11AM 15 So we're not relying upon the prosecution history
16 for our claim construction. We agree the prosecution history
17 is sort of orthogonal to the claim construction. Instead
18 where -- but we think, you know, just even looking to the
19 claims themselves even before getting the claim construction,
11:11AM 20 that's enough. You should just find the claims are not
21 abstract at all.

22 In fact, you know, the length of the prosecution
23 history does bear on the inventive step two, you don't even
24 really need to get there. It's a very specific description
11:12AM 25 of how QoS is performed. So that is enough.

1 However, if you -- the place where we think we very
2 much disagree with your opinion, respectfully, is that you
3 held that the patentee did not act as its own lexicographer
4 and that we were reading in the preferred embodiment of the
11:12AM 5 patent.

6 If you could direct your attention to slide 15 of
7 our presentation.

8 THE COURT: Okay. I'm there.

9 MR. SHIMOTA: Starting at the end, we've got the
11:12AM 10 AIP Acquisition, LLC, v. Cisco Systems, Inc., case. In that
11 case the Federal Circuit held that where you've got
12 capitalized terms and abbreviated terms in a claim, that
13 strongly suggests that there is probably a definition.

14 It's like a contract, right? You capitalize a term
11:13AM 15 in a contract and you think, okay, this is probably
16 definitions. You look above and the parties do define the
17 term.

18 Well, you look to the patent, and your -- the
19 Court's opinion cites to this. But in the '213 patent at
11:13AM 20 column 1, lines 55 to 62, and the '422 patent at lines 60 to
21 67, you see there it reads: The emerging multimedia over
22 coaxial lines MoCA standard architecture impacts --

23 THE COURT: Slow down just a bit, please.

24 MR. SHIMOTA: Okay. Gotcha -- impacts this problem
11:13AM 25 in that, one, network behaviors dynamically assign a device

1 -- and this is the important part; we bolded it -- quote,
2 unquote, the network coordinator NC rule in order to optimize
3 performance; two, only the device in the NC role is known to
4 be able to schedule traffic for all other nodes in the
5 network; three, form a full mesh architecture between any
6 device and its peers.

7 The fact that the network coordinator is -- has the
8 quotation marks around it, particularly coupled with the fact
9 that the claim language recites a network coordinator
10 abbreviated NC, to us, particularly at this stage, in the
11 Sunderland case we think it's at least plausible. In fact,
12 we think it's dispositive that this --

13 THE COURT: What case did you say?

14 MR. SHIMOTA: It was the Sunderland case that came
15 out recently that said that, you know, at the pleading stage
16 a claim construction needs to at least be plausible. We
17 think that it's not only plausible, but this is dispositive,
18 that this is a situation where the patentee has acted as its
19 own lexicographer and the claim should be construed as this.

20 So, I mean, we -- the definition here is a little
21 cumbersome, so we in our construction, we shorthanded a
22 little bit. But if you wanted to adopt a construction which
23 just quoted from the patent where we got there, that would be
24 fine.

25 If you see on slide 14, our construction follows

1 precisely from the definition. You know, it's a node that
2 manages and coordinates QoS of service blows by layer two
3 messages. So MoCA, you know, what's there, what's talked
4 about is the network controller MoCA. MoCA exists at layer
5 two, at least in terms of a network, the management and
6 coordination function. So that's where layer two comes from.

7 Next part, among peer nodes of the flows. The fact
8 that the network controller is a peer of other nodes in the
9 network is the fact that it's a mesh. That's where that
10 comes from.

11 THE COURT: Say that one more time.

12 MR. SHIMOTA: The fact that -- the definition
13 provides that the network coordinator is in a mesh network.
14 Our construction says that insofar as we're referring to the
15 fact that the network coordinator is a peer node.

16 That is to say that it can be any -- in this
17 network where you've got, for example, a bunch of set-top
18 boxes which are communicating with one another, any node, any
19 peer, they're all the same. They're all peers of one
20 another. Any one of them can be assigned the role of being
21 the network coordinator.

22 There's not some special box that manages
23 everything like a gateway. It's all the same thing, and
24 that's where it comes from our construction. That's why we
25 believe that if you look at the claims, particularly in light

1 of the definition which we provided to you -- if you could
2 turn to slide 18, Entropic's construction. You know, this is
3 why we think this is frankly a very easy case.

4 We pointed you to the claim language itself, if you
11:17AM 5 don't even get to construction, is a very specific way of
6 doing QoS, right. That should be enough. But then when you
7 get to the definition provided for network coordinator,
8 first, this network coordinator is a computer that its
9 functionality exists at layer two in the machine.

11:17AM 10 So it is a specific machine. The layers in the OSI
11 model are important. They're meant to be building blocks
12 which can be taken in and out. So that makes it a specific
13 machine.

14 The fact that it's a peer-to-peer network, a mesh,
11:17AM 15 means that it's a specific network. So this claim, this
16 patent has a specific way of doing QoS. It's got a specific
17 machine which is programmed at a particular layer, and it's
18 done in a specific network.

19 I would submit to you that this is as far as you
11:18AM 20 can get from an abstract idea, Your Honor. So it's one where
21 we think it should be an easy case and you should hold that
22 it's patentable.

23 Lastly, your opinion points out that in claim 16 of
24 the '422 patent -- are you there?

11:18AM 25 THE COURT: Claim 16 of the '422, yes.

1 MR. SHIMOTA: Yes. So in that patent your opinion
2 points out, you say, that our claim construction is in
3 conflict with claim 16 of the '422 patent. And that's
4 because --

11:18AM

5 THE COURT: Hold on one second. I had a note on
6 this.

7 MR. SHIMOTA: Okay.

8 THE COURT: Okay. And what specifically are you
9 looking at in my tentative?

11:19AM

10 MR. SHIMOTA: Just a second, Your Honor.

11 So if you look at footnote 28 on page 12 of your
12 tentative.

13 THE COURT: Hold on one second. Yes. Okay. I'm
14 with you.

11:19AM

15 MR. SHIMOTA: So you note there: The applicant
16 did, however, expressly disclose Layer 2 Management Entity,
17 L2ME, messages in claim 16 of the '422 patent. This drafting
18 choice further suggests that the scope of claim 1 is not so
19 limited and supports the Court's decision to disregard
20 Entropic's proposed construction.

11:19AM

21 And you see that at the last element of claim 16
22 there. So I would respectfully disagree with Your Honor.
23 The L2ME Management Entity messages are a specific type of
24 layer two message.

11:20AM

25 It doesn't mean at all that -- that doesn't

1 conflict with the definition which is provided in the patent
2 that the network coordinator exists at the layer two. It
3 just says this adds further to that, that there is a specific
4 type. These L2ME messages are used in connection with the
5 QoS process.

6 So I think respectfully your tentative order is
7 incorrect insofar as it holds that there is not a definition
8 there. But I'd also say that even if you disagree with me,
9 then given your opinion in claim 16 and the recitation of
10 these L2ME messages, at a minimum claim 16 should be held to
11 be not abstract and patentable. But I still think this is an
12 easy case.

13 THE COURT: So are you saying that claim 1 is not a
14 representative claim because claim 16 is substantially
15 different?

16 MR. SHIMOTA: Well, I think they're representative
17 insofar as they use the same network coordinator. I don't
18 think that you necessarily need to use L2ME messages. So
19 it's a further reason -- I think you should adopt our
20 construction. I think that the network coordinator is in all
21 the claims and should be adopted, and it's representative
22 insofar as that.

23 I do think it's not -- and frankly Cox says this,
24 that the '213 and '422 describe there are differences in
25 terms of the QoS flows. I think both of them are specific

1 enough that, you know, each of them on their own, even
2 without claim construction, are easily not abstract and
3 specific.

4 But even in that regard, I don't think that claim 1
11:22AM 5 is representative of all the claims in the patents. There
6 are differences. But I don't think you really need to get
7 there. I think this is frankly an easy enough case, so I
8 don't want to focus on that.

9 THE COURT: Okay. I understand.

11:22AM 10 MR. SHIMOTA: Unless you have any other further
11 questions, I'm --

12 THE COURT: No. That's very helpful. Thank you.

13 MR. SHIMOTA: Thank you for your time, Your Honor.

14 THE COURT: Okay. Let me hear from Cox, please.

11:22AM 15 Thank you.

16 MS. ISAACSON: Good morning once again, Your Honor.
17 April Isaacson on behalf of the Cox defendants.

18 Your Honor, as you will probably not be surprised,
19 we were very pleased with your tentative order and agreed
11:23AM 20 with everything that's written therein, but I will go through
21 some of my presentation, and you will see that it very much
22 aligns with what Your Honor put in the tentative.

23 I think we can skip through to the ninth slide.

24 The original slides, you talked about the fact that you
11:23AM 25 already know, you know, the basics of the claims, et cetera,

1 and we don't need to go through the case law.

2 I will start with the '422 first because that's the
3 way we did it in our briefing. In terms of step one, as you
4 correctly stated in the tentative, it's directed to the
5 abstract idea of forming an aggregated data traffic list by
6 requesting and receiving information from nodes within a
7 network about scheduling data transmissions. Nothing
8 special.

9 THE COURT: Slow down just a bit. Thank you.

10 Okay.

11 MS. ISAACSON: One of the things I want to point
12 out is in the opposition brief, Entropic did not dispute any
13 of the analogous case law that we set forth. If you turn to
14 the second slide, it's just going through the -- slide 10,
15 it's going through step one, again very much in line with
16 what Your Honor put in the tentative.

17 It's purely functional. It doesn't have the how.
18 Making an abstract idea. What they're claiming here, maybe
19 they aspire to claim something else, as Mr. Shimota said,
20 with a specification and a long file history, but the reality
21 is they didn't claim it.

22 What's claimed here is talking about requesting,
23 communicating, receiving, forming an aggregate list,
24 communicating to a fourth message. Entropic admits that the
25 file history focused on particular functional limitations.

1 Again, we're not getting into the how. We're getting into
2 the function.

3 If you turn --

4 THE COURT: This is kind of an aside. Let me ask
11:25AM 5 you the same question I asked DISH's counsel. So is there
6 some -- there are a lot patents in suit here. Is there some
7 subsequent patent that actually did claim -- solve the
8 problem that you're identifying as why the '422 patent does
9 not meet 101?

11:25AM 10 MS. ISAACSON: I'll give you the same answer that
11 my colleague did. I really couldn't represent that at the
12 time -- at this time, unfortunately. So I'm not quite sure
13 of the answer to that.

14 If you go to the next slide, Your Honor, slide 11,
11:25AM 15 this shows how the Electric Power Group case that you cited
16 in the tentative is incredibly instructive. We've done a
17 side-by-side analysis, and again this was in our opening
18 brief and was not distinguished in plaintiff's opposition
19 brief.

11:25AM 20 So if you look here, it's analogous in the terms of
21 there's receiving, sending, receiving, forming, sending.
22 It's the same thing with Electric Power Group where it's
23 talking about collecting data, receiving, detecting,
24 displaying, things of the like.

11:26AM 25 One of the other things that was pointed out I

1 believe in Your Honor's tentative and it goes to this case
2 here is although the claims are lengthy and numerous, they
3 don't go beyond requiring collecting analysis and displaying
4 of information as set forth in the Electric Power Group case.

11:26AM 5 If you turn to slide 12, Your Honor, the
6 claireLOGIC case is also instructive. Once again this case
7 was cited in our opening brief and was not distinguished by
8 opposing counsel in their opposition. Same thing here with
9 claireLOGIC. If you look at it side by side with patent
11:26AM 10 claim 1 of the '422, we've got receiving, sending, receiving,
11 forming, sending. Same sort of thing over here, it's about
12 electronically collecting information, transforming the data,
13 validating the data, analyzing.

14 I will point out as well there's not an analyzing
11:27AM 15 step that's in actually the claims of the '422, the
16 representative claims 1 of the '422 or the '213.

17 If you turn to the next slide, Your Honor, in terms
18 of step two. So we've already set forth and agree, of
19 course, with Your Honor's tentative that there is no -- it's
11:27AM 20 an abstract idea, what they've tried to claim. So then you
21 go to step two, of course, and here they haven't shown
22 anything about -- anything that's specific architecture or
23 structure of the like.

24 They talk about computer code that's implemented by
11:27AM 25 a general-purpose processor. These are all things that would

1 be known in the field. Nothing special or specific about how
2 they're implementing what they purport to be their invention.

3 The '422 patent claims recite the abstract process
4 that can be accomplished by a general-process type of
11:28AM 5 equipment for networking, including nothing more than nodes.
6 You know, we have this networking node that they talk about,
7 but it's just one of several types of nodes that are in this
8 purported invention that they talk about, and it's dynamic.
9 So it's not a specific node. It can move around and be a
11:28AM 10 different node.

11 The nodes, we also point out if you look at the
12 Alice case that the nodes are similar to a communications
13 controller, and that's very much talking about a function of
14 something that's generic such as in the Alice case.

11:28AM 15 Turning to the next slide, slide 14, Your Honor,
16 this shows once again that the steps that occur here are very
17 generic, and there's nothing about them in terms of the order
18 of them whatsoever that takes them within the inventive
19 concept. There's nothing special about them that they've
11:29AM 20 claimed. It's only functional in terms of just various steps
21 that can be done by generic computer equipment.

22 If you next turn to slide 15, we'll turn to the
23 '213 patent, step one. Again we agree with Your Honor's
24 tentative on this, that this is directed to an abstract idea.
11:29AM 25 It's requesting and receiving information again within these

1 nodes within a network that are generic nodes in order to
2 verify the availability of resources --

3 THE COURT: Slow down just a bit.

4 MS. ISAACSON: Yes, Your Honor -- the availability
11:29AM 5 of resources for transmitting data within a network, within a
6 generic network. And then if there's not availability,
7 they'll calculate and figure out the maximum transmission
8 rates that can be used.

9 Once again in the opposition brief from plaintiff,
11:30AM 10 they did not dispute any of the analogous case law.

11 If you turn to the next slide, Your Honor, talking
12 more about step one of the '213 patent, you can see that
13 these are purely functional. There's not the how, as you put
14 forth in your tentative. There's not a how here. They're
11:30AM 15 only talking about broadcasting, receiving, receiving,
16 allocating, denying, determining, without saying how that
17 would be performed.

18 Entropic admits in their briefing that in the file
19 history, it was focusing -- when it was doing the examination
11:30AM 20 that they talked about that was extremely lengthy -- on
21 functional limitations, not anything about any specific
22 architecture.

23 If you turn to slide 17, Your Honor, same thing.
24 Not only did they not distinguish it, distinguish the
11:30AM 25 Electric Power Group in the other patent, but here as well.

1 Like I said before, you've got on the left claim 1 that both
2 sides, by the way, have agreed is the representative claim.
3 They put that in their briefing.

4 There's the broadcasting step, a receiving step,
11:31AM 5 receiving, allocating, and then nodes of being unavailable
6 due to bandwidth. Then they'll make the data rate
7 functionality and they'll figure that out.

8 In terms of the Electric Power Group, it's the same
9 thing we talked before about. You might have lengthy claims
11:31AM 10 with lots of things in there, but it doesn't mean that
11 there's anything there that is showing you the how in terms
12 of anything beyond just claiming functionality of common
13 general computer equipment or potentially software.

14 If you turn to the next slide, Your Honor, once
11:31AM 15 again a case that was in our opening brief that was not
16 distinguished by opposing counsel, the Prism Technologies.

17 You can see that you have the broadcasting and all
18 the different steps that are in claim 1 that's the
19 representative claim. In the Prism Technologies case, very
11:32AM 20 similar steps, and that case, you know, was found to be an
21 abstract idea.

22 Turning now to the next slide, Your Honor, slide
23 19, step two, so getting into the inventive concept. It's --
24 the present disclosure is method and apparatus that can be
11:32AM 25 embodied in the form of generalized computer code or

1 general-purpose processor. Nothing specific. Nothing
2 special about it in terms of any architecture or structure.

3 They talk about this node coordinator, source node,
4 egress node. Again the network coordinating node can be any
11:32AM 5 node. It's dynamic. Once again these are similar to the
6 communications controller that is purely functional and
7 generic as we have in the Alice case.

8 Turning to slide 20, Your Honor, the '213 patent
9 doesn't present an inventive concept as you put forth in your
11:33AM 10 tentative. The steps occur in a very generic order. There's
11 nothing special about them. It's just sending information,
12 talking about functions of things without getting into the
13 how.

14 I'll turn you now to slide 22 because these are
11:33AM 15 some of the things that Your Honor had in the tentative that
16 talked about the layer two and how they're importing that
17 limitation in.

18 Of course, we don't believe that any claim
19 construction is necessary, as was set forth in our briefing.
11:33AM 20 I know Your Honor said that even if you were to kind of take
21 them at their word that they need to import this in, it still
22 doesn't save them. We agree with that and also agree that,
23 you know, it would be improper to do so.

24 In terms of the claim 16, that point would really
11:33AM 25 go to claim differentiation as opposed to necessarily -- I

1 think he was kind of mucking it up of it being a
2 representative claim. Both parties had agreed that claim 1
3 was going to be the representative claim for both of these.

4 As Your Honor put in the tentative, they also
11:34AM 5 ignore the very important principles of patent law. If you
6 turn to slide 23, it talks about importing the embodiments
7 from the specification into the claims themselves. Of
8 course, when we're at the 101 stage, then we're dealing with
9 looking at the asserted claims themselves as opposed to
11:34AM 10 trying to import from the specification.

11 THE COURT: This is probably a question for
12 Mr. Shimota. Is claim 16 asserted?

13 MS. ISAACSON: No, Your Honor. We have at this
14 point -- and he can correct me if I'm wrong, of course -- but
11:34AM 15 it would be -- it was claim 1 of each of the patents that was
16 set forth in terms of -- in the complaint.

17 MR. SHIMOTA: Your Honor, I don't want to cut into
18 her argument.

19 THE COURT: Just that quick sort of rifle-shot
11:35AM 20 question.

21 MR. SHIMOTA: Claim 16, in our complaint we
22 identified representative claims, but claim 16 will be
23 asserted if you rule --

24 THE COURT: That's a yes?

11:35AM 25 MR. SHIMOTA: Yes.

1 THE COURT: Okay.

2 Go ahead, Ms. Isaacson. Thank you.

3 MS. ISAACSON: The other thing that Your Honor
4 pointed out and I think Mr. Shimota tried to argue but, of
11:35AM 5 course, we disagree with that, is that they're conflating
6 patent eligibility with novelty. They talk a lot about the
7 file history 102, 103, but that's really not at issue here,
8 as Your Honor knows.

9 They ignore the principles of claim construction.
11:35AM 10 Like I said, it's really here about function, is all we're
11 getting. We're not getting the how. Of course, as I said
12 before, too, we don't believe that any claim construction is
13 necessary.

14 I want to address, before I forget, some of the
11:35AM 15 arguments that were made by Mr. Shimota. He talked about the
16 fact that they were their own lexicographer and pointed very
17 specifically to the specification. Needless to say, we
18 disagree with that.

19 Actually, if you look at another portion of the
11:36AM 20 specification where they're talking about network
21 coordinator, it's on column 4, and it starts at line 2. It
22 says: In some embodiments --

23 THE COURT: Hold on.

24 MS. ISAACSON: Sorry, Your Honor.

11:36AM 25 THE COURT: '213?

1 MS. ISAACSON: Yes, Your Honor, column 4, line 2.

2 THE COURT: I'm there. Go slowly, please.

3 MS. ISAACSON: Will do, Your Honor.

4 In some embodiments the network is a coordinated
11:36AM 5 network having a network coordinator, NC, that coordinates
6 the communication between the several devices connected in
7 the network.

8 I would argue that's not being a lexicographer.
9 It's basically saying a network coordinator is coordinating a
11:37AM 10 network. It is not giving any kind of special definition
11 whatsoever. I don't agree with their read of column 1 that
12 he talked about before in terms of what network coordinator
13 means.

14 He also cited to the AIP Acquisition case, but that
11:37AM 15 was actually a PTAB case where they were talking about
16 internet protocol and whether it's a capital IP, internet
17 protocol. I think we can all agree that that's a well-known
18 term of art within the field.

19 I also wanted to point out that in their briefing
11:37AM 20 when they claim that they're their own lexicographer,
21 noticeably absent from that was any citation to the
22 specification whatsoever, although today Mr. Shimota brought
23 it up during argument.

24 Going back to the network coordinator, they
11:37AM 25 admitted in their brief that it's not different or unique in

1 terms of the device. That goes to that idea I talked about
2 before of it being dynamic and random of what is actually the
3 network coordinator.

4 THE COURT: Where is that admission?

11:38AM

5 MS. ISAACSON: In their brief at 14, and it's
6 citing the '213 patent. It's line -- sorry, column 1,
7 lines 57 through 59.

8 THE COURT: Sorry. You said in their brief they
9 admitted --

11:38AM

10 MS. ISAACSON: In their brief at 14, Your Honor.

11 THE COURT: What line on 14?

12 MS. ISAACSON: Oh, sorry. I'm citing to the brief.
13 If you're in the patent, the '213, it's column 1, lines 57
14 through 59.

11:38AM

15 THE COURT: Okay.

16 MS. ISAACSON: Also, as Your Honor noted in the
17 tentative, the complaint itself gave a very cursory statement
18 just saying this is -- this patent is directed to patent
19 eligible subject matter pursuant to 101. Nothing more.

11:39AM

20 The layer two idea I know that you addressed as
21 well. I mean, I think that it's very clear that maybe they
22 wanted to include that. Perhaps that was aspirational in
23 terms of what they thought was an improvement, but they
24 didn't actually claim it even after a very lengthy
25 prosecution.

11:39AM

1 They also pointed to the fact that Cox purportedly
2 talked about inventiveness of MoCA as a whole. Well, that
3 may be the case, assuming arguendo it is the case. That
4 doesn't mean that they didn't claim something that's an
5 abstract idea under Alice Mayo. Just because MoCA as a
6 concept itself may be something that's inventive doesn't mean
7 that that's actually -- that they've actually claimed
8 something that is not abstract here in these two patents that
9 we're talking about.

10 Unless Your Honor has any further questions for me,
11 I have nothing more.

12 THE COURT: No, I don't think so. Thank you very
13 much. I appreciate it.

14 MR. SHIMOTA: May I have 30 seconds?

15 THE COURT: You may.

16 While you're getting arranged, Madam Court
17 Reporter, would you like a short break? We have one more
18 tentative to talk about after Mr. Shimota's --

19 MR. SHIMOTA: Just 30 seconds.

20 THE COURT: So we'll do it after.

21 Yes, I definitely want to hear your --

22 MR. SHIMOTA: Yeah. So I was actually surprised
23 and very happy that counsel said over and over and over again
24 that the network coordinator is dynamic, that it can be any
25 node. I think there's, like, five or six times they said

1 this, over and over.

2 That's our point, Your Honor, I mean, as part of
3 our construction. That's why it's a mesh network. This is a
4 specific network. So I am surprised and happy, and I think
11:41AM 5 that's why you should -- this is an easy opinion for you,
6 that this is a very specific network and that you should hold
7 the claims are patentable. We also think that it's a layer
8 two for the parts of our construction, but it's --

9 THE COURT: Slow down.

11:41AM 10 MR. SHIMOTA: Thank you.

11 It's -- I believe all the parties agree that this
12 is -- this is a mesh network. It's a situation where the
13 network coordinator in this network can be any node. It can
14 be any set-top box in your house that's different and
11:41AM 15 specific.

16 And so for those reasons we think that you should
17 respectfully change your tentative order. Thank you,
18 Your Honor.

19 THE COURT: Got it. Thank you. That was very
11:41AM 20 helpful. You both have given me a lot to think about.

21 Let's take a short break. Let's really try to keep
22 it to five minutes.

23 MR. PADMANABHAN: Your Honor, I apologize. Before
24 we take the break, we just have one housekeeping for the next
11:42AM 25 presentation. We thought we would just address it now.

1 Comcast expects that it will discuss some
2 confidential information. Accordingly, we think that there
3 are some folks in the gallery that aren't permitted to hear
4 that confidential information, including potentially a
5 representative of Fortress.

6 So we would like to just make sure that we have the
7 gallery clear.

8 THE COURT: Is it impossible for you to make your
9 argument without addressing confidential information?

10 MR. PADMANABHAN: I can make an attempt,
11 Your Honor. Yeah, I can make an attempt.

12 THE COURT: Is there anything in the tentative that
13 you regard as confidential?

14 MR. PADMANABHAN: No, Your Honor. The tentative is
15 fine.

16 THE COURT: Let's try not to. If you get to a
17 point where you absolutely -- where you feel you cannot make
18 a substantive argument because of confidentiality issues,
19 raise it at that point.

20 MR. PADMANABHAN: I appreciate that, Your Honor.
21 We'll do our best to navigate.

22 THE COURT: Okay. Thank you.

23 So let's try to keep it to five minutes. Come back
24 and we'll talk about the third tentative. Thank you.

25 (Recess taken from 11:42 a.m. until 11:52 a.m.)

1 THE COURT: Good morning again. Please have a
2 seat. We do not need to recall the cases.

3 Before we start tentative three dealing with
4 Comcast and its standing and the 12(b)(6) motion, quick
11:52AM 5 question for Mr. Shimota. The MoCA standard-setting
6 documentation, does that define network coordinator?

7 MR. SHIMOTA: I believe it does, Your Honor.

8 THE COURT: And how does it define it?

9 MR. SHIMOTA: I believe it would be -- I would have
11:52AM 10 to pull it out. I can get it to submit it. I don't want to
11 misrepresent it to the Court. The network coordinator would
12 be a layer two entity that operates in the fashion described,
13 that we've described today.

14 But I need -- I don't -- off the top of my head. I
11:53AM 15 can get you MoCA, but I don't want to misrepresent to the
16 Court the precise verbiage of it.

17 THE COURT: Is that presently in the record
18 anywhere?

19 MR. SHIMOTA: I don't believe so, but -- do we
11:53AM 20 know? I don't believe that -- there are aspects of the MoCA
21 in our claim charts, the standard itself. I -- the
22 definitions I'm not certain, but I can get that. We can
23 submit that to Your Honor if you would like.

24 THE COURT: Okay. Let's talk about that at the
11:53AM 25 end. Remind me if I forget.

1 MR. SHIMOTA: I will, Your Honor. Thank you.

2 THE COURT: Okay. In the interest of time, let's
3 move to Comcast's motion. I think Entropic probably ought to
4 go first again, so that's Mr. Bridges, right?

11:54AM 5 MR. BRIDGES: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. BRIDGES: Good morning. It's good to see you
8 again. I feel like I was here just last month.

9 To start off, I would ask my colleagues from
11:54AM 10 Comcast if in my argument I stray into anything that you
11 might think is confidential information, if you will stop me
12 as quickly as possible. I'll try to be mindful of that.

13 First of all, Your Honor, with respect to the
14 tentative, there are parts we agree with and parts we don't
11:54AM 15 agree with, unsurprisingly for what seems to be such a
16 complicated issue -- or is it a complicated issue?

17 The parties' briefing so far certainly made it seem
18 that way, but I'm here to tell Your Honor that it's actually
19 a much, much simpler issue when Your Honor looks at what he's
11:55AM 20 actually being asked to decide.

21 So this is relevant. First of all, if you go to
22 your tentative at page 13 and the disposition.

23 THE COURT: Yes.

24 MR. BRIDGES: I just want to be very clear about
11:55AM 25 what it is that Your Honor is being moved to do and what

1 Your Honor is considering doing.

2 So you note here that Comcast's instant motion to
3 dismiss is granted with leave to amend, but the only motion
4 before Your Honor where Comcast is asking for you to dismiss
11:55AM 5 the case, the whole case, is Rule 12(b)(1).

6 THE COURT: So that -- so I'm -- that should say
7 denied in part and granted in part, because I'm denying -- if
8 I stick with the tentative, which is what we're here to
9 discuss --

11:55AM 10 MR. BRIDGES: Correct.

11 THE COURT: If I stick with the tentative, I'm
12 denying the motion with respect to 12(b)(1).

13 MR. BRIDGES: You're denying the Rule 12(b)(1)
14 motion.

11:55AM 15 THE COURT: Yeah, and granting 12(b)(6) but with
16 leave to amend.

17 MR. BRIDGES: Yes. And then we have to talk about
18 Rule 12(b)(6), what Your Honor is actually being asked to do
19 under rule Rule 12(b)(6). And I made this mistake,
11:56AM 20 Your Honor. I thought that at one point Comcast was asking
21 for the case, for the patent infringement claims to be
22 dismissed under Rule 12(b)(6), but that's not in fact what
23 Comcast is asking for.

24 Your Honor can take a look at --

11:56AM 25 THE COURT: I understood Comcast's -- maybe I

1 should have started with Comcast. I understood Comcast's
2 fallback position to be if you disagree with Comcast, that
3 Entropic does not have standing. Then --

4 MR. BRIDGES: Well, we could clarify, Your Honor,
11:56AM 5 in their briefing if you'd like. There's actually a fairly
6 clear statement of this in the opening brief at page 2.

7 THE COURT: Hold on one second. I want to eyeball
8 it myself. Okay.

9 MR. BRIDGES: And I would use the elmo, but I'm
11:57AM 10 afraid, Your Honor, of switching between the different
11 channels.

12 THE COURT: It wouldn't be helpful.
13 Okay. I have the briefing. Where should I look?

14 MR. BRIDGES: If you go to page 2, which is the
11:57AM 15 unique --

16 THE COURT: Page 2 of what?

17 MR. BRIDGES: Page 2 of the opening brief. The
18 unique page ID at the top is 3078. The page is titled Notice
19 of Motion and Motion to Dismiss.

11:57AM 20 THE COURT: Okay. I'm at the Notice of Motion and
21 Motion.

22 MR. BRIDGES: Okay. If you go down to line 22,
23 Your Honor.

24 THE COURT: Go.

11:57AM 25 MR. BRIDGES: Here we have the sentence:

1 Accordingly, even if the Court finds some basis for subject
2 matter jurisdiction, Comcast moves to dismiss Entropic's
3 willfulness claims pursuant to Rule 12(b)(6).

4 THE COURT: Okay.

11:58AM 5 MR. BRIDGES: And if you go on -- it's repeated at
6 the end, Your Honor, at page 37 of the brief, the unique page
7 ID 3113, the last sentence of the conclusion starting on
8 line 13.

9 THE COURT: Okay.

11:58AM 10 MR. BRIDGES: The same thing.

11 So the point here, Your Honor, is just that there
12 is two different motions with two different forms of relief
13 that are being asked for. Only one is to dismiss the case on
14 12(b)(1) grounds.

11:58AM 15 THE COURT: Okay. So in the interest of time, if I
16 stick with the tentative, what should I be saying in the
17 disposition?

18 MR. BRIDGES: I think what Your Honor had said
19 earlier is proper. I think Your Honor should probably say
11:58AM 20 that you're denying the Rule 12(b)(1) motion and that you're
21 retaining subject matter jurisdiction, which, of course,
22 Your Honor would have to do in order to do what is
23 contemplated in item two, which is eventually dismiss with
24 prejudice because, of course, you can't do that if you don't
11:59AM 25 have subject matter jurisdiction.

1 So for consistency purposes, I would just urge
2 that --

3 THE COURT: I understand.

4 MR. BRIDGES: -- you work on the disposition.

11:59AM 5 But this actually implicates the bigger issue,
6 Your Honor, of what exactly are you being asked to do.
7 You're only being asked to dismiss this case for lack of
8 subject matter jurisdiction. The parties, in the interest of
9 time --

11:59AM 10 THE COURT: In the tentative I'm not doing that.

11 MR. BRIDGES: In the tentative you're not, but what
12 I want to be clear about in the tentative is how Your Honor
13 gets there.

14 So what happens is that in the tentative Your Honor
11:59AM 15 pursues the path the parties have laid out for you in
16 briefing. The path that the parties laid out for you in
17 briefing is to do this by trying to interpret the VSA and try
18 to look at all of these complicated provisions.

19 But what happened, Your Honor -- if you have our
11:59AM 20 slide deck --

21 THE COURT: Yes.

22 MR. BRIDGES: -- I think it would be instructive to
23 turn to slide 13.

24 THE COURT: Hold on one second.

12:00PM 25 MR. BRIDGES: So apologies, Your Honor. Because of

1 the fact we weren't sure about tentative, you will have two
2 slide decks for this motion because there were an awful lot
3 of slides. They are -- the numbers --

4 THE COURT: Hold on.

12:00PM

5 MR. BRIDGES: -- page numbers are consecutive.

6 THE COURT: Hold on. I'm not sure I have your
7 slide deck here. Entropic's --

8 MR. BRIDGES: It is titled, Your Honor, Entropic's
9 argument in opposition to Comcast's motion to dismiss. It
10 looks like this, Your Honor (indicating).

12:00PM

11 THE COURT: Okay. I have it.

12 MR. BRIDGES: So if you will go forward to slide
13 13, I just wanted to highlight something Comcast pointed
14 out --

12:00PM

15 THE COURT: I'm there.

16 MR. BRIDGES: -- in reply. So Comcast says, well,
17 you're only relying on declaratory judgment cases. They're
18 inapplicable. They're declaratory judgment. And this got us
19 to asking the question, well, wait a minute. What cases is
20 Comcast citing in its briefing for the proposition that a
21 covenant can possibly deprive the Court of subject matter
22 jurisdiction?

12:00PM

23 And the answer is all of those are DJ cases. The
24 reason, Your Honor, is because it turns out that in a case
25 where the patent owner maintains a case for infringement, the

12:01PM

1 subject matter jurisdiction question is done. There's
2 nothing more to do.

3 There is a case or controversy because there is a
4 case or controversy. The Federal Circuit has actually
12:01PM 5 decided this issue in a line of cases which we discovered in
6 preparing for oral argument, and we sent these over to
7 Comcast last night when we recognized the importance of this.

8 I mean, obviously the Court wants to get it right
9 exactly, in particular for subject matter jurisdiction. So
12:01PM 10 if Your Honor will take a look at slide 14, this is the
11 implication.

12 The analysis of case or controversy which the
13 parties have spent a lot of time fighting about actually
14 doesn't in this case need to turn on the VSA at all because
12:02PM 15 it is so simplified, it's automatic.

16 As a matter of law where there is a properly pled
17 complaint for patent infringement, meaning we asked for
18 relief under the Patent Act, whatever covenants or licenses
19 may exist, Your Honor, those are defenses.

12:02PM 20 Your Honor has jurisdiction over claims, not
21 issues. The claim that Your Honor has jurisdiction over is a
22 patent infringement claim. That's federal question. No one
23 doubts it. Your Honor's jurisdiction. End of story. And
24 that is what Air Products says.

12:02PM 25 THE COURT: Let's take a hypothetical where

1 plaintiff purported patentee sues alleged infringer, like a
2 one patent that has one claim in it, to make it simple. When
3 one assigns a patent, one has to assign the right to not
4 merely the patent but the right to sue for infringement.

12:03PM 5 So let's say that the plaintiff was assigned the
6 patent but didn't have an express assignment of the right to
7 sue for infringement. The defense that the defendant usually
8 raises in those circumstances is a 12(b)(1) type standing
9 defense.

12:03PM 10 MR. BRIDGES: Uh-huh, but that's not what's being
11 raised here, Your Honor. That's not what King
12 Pharmaceuticals and those cases are about. The question
13 isn't standing. The question is whether there's a case or
14 controversy that the Court can hear.

12:03PM 15 All of those cases like King Pharmaceuticals, the
16 question there is the patent owner doesn't want a case. The
17 patent owner either never brought a patent infringement case
18 or brought one and then changed its mind.

12:04PM 19 Then in those cases what's happening is that the
20 patent owner is saying we don't want any invalidity or
21 non-infringement counterclaims to have to face. So here's
22 what we'll do. We'll provide you a covenant or a license and
23 represent to the Court that we are never going to sue you for
24 patent infringement.

12:04PM 25 That has the effect of removing reasonable

1 apprehension of suit, so therefore the Court has no
2 jurisdiction. The reason, Your Honor, is jurisdiction over
3 what? In those cases the jurisdiction question is over the
4 counterclaims, the DJ-styled counterclaims -- or affirmative
12:04PM 5 DJ claims, as the case may be.

6 Those claims rest on the Declaratory Judgment Act
7 for jurisdiction. It must meet those requirements, or
8 otherwise there is no case or controversy to be had.

9 THE COURT: So what's the therefore, what?
12:05PM 10 Therefore, what in this case?

11 MR. BRIDGES: Exactly. So in this case the point
12 of this, Your Honor, is simply that instead of issuing a
13 final ruling that attempts to go through the VSA and
14 determine what it means, Your Honor can simply follow the
12:05PM 15 binding authority of Air Products, which is on slide 15, and
16 deny the motion out of hand.

17 In fact, if Your Honor will take a look at
18 slide 15, can you see that -- which is also in our binder at
19 tab one, the Air Products case -- this is a case where we
12:05PM 20 have an unquestioned really, unquestioned license in terms of
21 scope, and the question was just termination.

22 So was the termination of the license effective?
23 And in Air Products the Federal Circuit had quite a lot of
24 analysis here and looked at some old Supreme Court cases and
12:06PM 25 said what you can see on the slide, Your Honor, that the

1 resolution of state law questions that may even render a
2 federal question moot, even if that happens, it does not
3 deprive Your Honor of subject matter jurisdiction where we
4 have made out a properly pled claim of patent infringement.

12:06PM 5 THE COURT: So does that mean we would kick the
6 issue of whether the covenant not to sue runs with the patent
7 to Entropic, do we kick that issue down the road? I mean, it
8 doesn't go away for all time.

12:06PM 9 MR. BRIDGES: It absolutely does not, and that's
10 precisely the point, Your Honor, that Your Honor shouldn't at
11 the Rule 12 stage be in the business of deciding the contract
12 issue for all time.

13 That's the thing that's a little bit concerning is
14 that if Your Honor had to do that, you would have to do that.
12:07PM 15 But if as a matter of judicial restraint you don't have to do
16 that, then you shouldn't do that.

17 The denial in this case can be as simple,
18 Your Honor, as the Pixton case, which is in tab four, where
19 the Federal Circuit in one paragraph decided jurisdiction
12:07PM 20 applies.

21 So if Your Honor goes to the very end of the Pixton
22 case -- it's very short -- the Federal Circuit in one
23 paragraph simply says that these facts are like Air Products.
24 There's a question about the applicability of a license or
12:07PM 25 covenant defense, and as such we have jurisdiction.

1 THE COURT: Okay. Couple things. So it's kind of
2 kicking the can down the road, and then I adjudicate this
3 issue on a summary judgment motion?

4 MR. BRIDGES: Yes. I would expect that to be true,
12:07PM 5 Your Honor. The reason I want to urge that upon the Court is
6 the other part of my argument, the part of my argument which
7 is that in fact there are an awful lot of issues here which I
8 believe does require some detailed analysis of the VSA and
9 what it means.

12:08PM 10 And there is where we would depart with Your
11 Honor's tentative. We don't necessarily agree with all of
12 the conclusions that Your Honor draws, right, about various
13 aspects of the VSA.

14 For instance, we don't -- let me give you an
12:08PM 15 example. Your Honor in the tentative concludes that the VSA
16 is on a patent by patent or, since trademarks, copyrights,
17 and trade secrets are also involved, I suppose on a
18 trademark-by-trademark basis, a copyright-by-copyright basis,
19 et cetera.

12:08PM 20 But there's a perfectly plausible explanation. I
21 mean, if I allow someone into my home and say, you know, you
22 can come in and use my things but don't steal anything, and
23 they steal one item, it's quite plausible that I might revoke
24 the authorization for everything because they're acting
12:09PM 25 inconsistently with the bargain. And that's our position on

1 the VSA.

2 Our position on the VSA is that if Comcast is
3 willfully infringing even on one patent, that's acting
4 inconsistently with the business relationship the VSA
12:09PM 5 establishes. Remember, Your Honor, the VSA is not a license.
6 It's not about this particular section. The VSA is a vendor
7 support agreement. It's about a bigger business relationship
8 between the parties.

9 So I'm sure that Comcast will dispute hotly the
12:09PM 10 particular meanings. They do, and Your Honor has seen this
11 in the briefing. Our point is there's an awful lot of
12 material here where the Court would benefit tremendously from
13 having information from discovery to make this decision
14 ultimately. For example --

12:10PM 15 THE COURT: But these are kind of new issues that
16 you didn't raise in the briefing.

17 MR. BRIDGES: No. We've raised all these issues in
18 terms of interpretation and in terms of what the VSA should
19 mean.

12:10PM 20 THE COURT: But not these cases and not your --

21 MR. BRIDGES: No, not -- yes, Your Honor. We did
22 not -- in this sense we did not do Your Honor a service
23 because what happened, I think honestly, we took the Comcast
24 cases on subject matter jurisdiction, and we were eager to
12:10PM 25 answer all of the challenges that they made to what this

1 covenant means and the representations, et cetera. And we
2 were concerned that Your Honor might actually on a 12(b)(1)
3 motion think that you had to decide these issues and do it.

4 Once they identified for us the fact that, wait,
12:10PM 5 these are all DJ cases, then it became apparent that we
6 should make sure that we're not giving the Court the wrong
7 authority. At that point we realized, oh, the 12(b)(1)
8 motion is easy. It can be just dismissed almost immediately.

9 Then at that stage the only thing that's left for
12:11PM 10 Your Honor to decide is the 12(b)(6) motion, and the 12(b)(6)
11 motion is only limited to the particular willfulness
12 allegations.

13 THE COURT: So let's go to that. If I stick with
14 the tentative at least in that aspect, that willfulness has
12:11PM 15 not been pleaded sufficiently --

16 MR. BRIDGES: Yes.

17 THE COURT: -- Entropic can fix that?

18 MR. BRIDGES: Yes. Entropic can fix that. And
19 that's not a problem, Your Honor. We don't have a problem
12:11PM 20 with that part, saying, hey, you know, you can amend. What I
21 would say, I would just point out one thing, because I don't
22 want to mislead Your Honor about how this may play out.

23 This case is unique in procedural posture from most
24 cases that have willful infringement as a part of the case.

12:11PM 25 THE COURT: Because?

1 MR. BRIDGES: Because willful infringement here is
2 an integrated part of Comcast's license or covenant defense.
3 So what we have, Your Honor, is we have an affirmative patent
4 infringement claim.

12:12PM

5 Assume for a moment that Entropic hadn't pled
6 willful infringement at all, didn't plead it. What would
7 happen? Comcast has a defense to that claim of patent
8 infringement. We have a contract. There is, then, of
9 course, a defense to the defense. That would implicate the
10 willful infringement issue. Right?

12:12PM

11 That's going to come in no matter what. It comes
12 in because it is part and parcel of the contract defense.

13 THE COURT: You're saying it doesn't need to be
14 pleaded.

12:12PM

15 MR. BRIDGES: I'm saying that it doesn't need to be
16 pleaded. In fact, it doesn't as a technical matter -- not
17 that we wouldn't. We're happy to because we're happy to
18 engage with that issue. I'm saying that as a technical
19 matter, it doesn't need to be pleaded for purposes of the
20 motions that are in front of Your Honor.

12:13PM

21 If there's a future motion down the road where
22 Your Honor has decided, for example, perhaps at the summary
23 judgment stage that without a showing of willful
24 infringement, there is no claim here, if that happened, I
25 would even at that stage say that we do not have to plead a

12:13PM

1 defense to a defense. We have to plead an affirmative claim.
2 We will have. We will have pled the willful infringement
3 issue, Your Honor.

4 I'm just warning you ahead of time that I don't
12:13PM 5 want to mislead Your Honor so that in a future dispute you
6 say, well, but at the first hearing you agree that you would
7 amend these things and you would put in willfulness
8 allegations and that everything turns on that. I just want
9 to observe the unique posture here because with willfulness
12:13PM 10 is pulled in as part of the defense.

11 THE COURT: Okay. I appreciate that. I think I
12 understand your point, and I need to think through the
13 implications here.

14 And another point that you made that I don't want
12:14PM 15 to miss is I think you made the point that if you, even under
16 my tentative, if you successfully plead willful infringement
17 with respect to any patent or any claim of any patent, you
18 can proceed with your infringement case with respect to all
19 patents in suit.

12:14PM 20 MR. BRIDGES: Yes. And the reason for that,
21 Your Honor, is that actually both parties seem to agree --
22 they may turn out to say they don't agree, but certainly from
23 their opening brief both parties had agreed that that is
24 exactly what would happen.

12:14PM 25 The reason that they argued that is they wanted

1 Your Honor to find certain things about the timing of when
2 you would measure willful infringement. They wanted it to
3 only apply to before the VSA was signed, and Your Honor's
4 tentative does not find that. That's why they -- I believe
12:15PM 5 that's why they took the position that what happens is
6 willful infringement negates the covenant. It's gone --
7 which means it was never there. It didn't forbid anything.

8 So all of the patent infringement claims which are
9 being held in abeyance in this covenant like a giant dam
12:15PM 10 holding back the wall, willful infringement breaks the dam.
11 At that point, in our view, because willfulness acts
12 inconsistently with the business relationship MaxLinear and
13 Comcast expected to establish, all bets are off with respect
14 then to claims of infringement. The covenant is negated.

12:15PM 15 As a result of that, right, it would unwind all of
16 that material, which -- and I believe that I'm giving
17 Your Honor a lot to think about, so I don't want to hit too
18 many issues in a row, but I would say that's another point
19 where we feel like your tentative does not engage fully with
12:16PM 20 our arguments of contract interpretation because, for
21 example, that also has a serious effect with respect to
22 whether or not this could authorize acts of infringement.

23 It seemed in places that Your Honor might be
24 suggesting, yeah, this looks like it authorizes Comcast to
12:16PM 25 infringe, but that can't be, Your Honor, because you cannot

1 de-authorize an act that you've authorized. We made these
2 points in the brief and you -- you cannot do that.

3 So what you're not allowed to do is give someone a
4 license for a past act and then later say I'm going to take
12:16PM 5 that back and reconvert that authorized act into an
6 infringing act.

7 You cannot, in other words, perform a Lazarus-type
8 of miracle, Your Honor, on claims that you've surrendered.
9 The Courts don't allow that. That's a no-no because we don't
12:17PM 10 want the chaos that could ensue.

11 Now, you may be able to terminate a license, change
12 things going forward. But going backward you can't. So what
13 that means is if you can retroactively take it back, which is
14 absolutely what the covenant is meant to do and what the
12:17PM 15 parties seem to agree on, it can't be an authorization in the
16 first place.

17 THE COURT: So worst case scenario for Entropic, if
18 SDNY says -- now I've forgotten your licensor.

19 MR. BRIDGES: Oh, the party that originally owned
12:17PM 20 the patents, Your Honor?

21 THE COURT: Yes.

22 MR. BRIDGES: MaxLinear.

23 THE COURT: MaxLinear -- not licensor but your
24 assignor, I guess. SDNY says: MaxLinear, you win. The
12:17PM 25 patents revert to you. I guess that would be the remedy,

1 right? What's the remedy -- if MaxLinear wins in the
2 Southern District of New York, what happens?

3 MR. BRIDGES: Oh. Well, what's at issue in the
4 Southern District of New York actually, Your Honor, is
12:18PM 5 different than what's at issue here, because there what's at
6 issue is Comcast is saying that you have breached this
7 statement of work that's attached to the VSA. So you've
8 breached the VSA because you're not providing us services.

9 THE COURT: Okay. Just stick with my question.
12:18PM 10 MaxLinear wins in SDNY. What's the remedy?

11 MR. BRIDGES: If MaxLinear wins, then in
12 MaxLinear's view I believe there is no remedy because they
13 simply are seeking to have nothing happen, that they can end
14 their work under the VSA and that's it. According to, as far
12:18PM 15 as I understand -- I'm sure this is in contention -- they
16 believe that that work has ended, and so nothing happens.

17 MaxLinear is not asking, nor is Comcast, for the
18 New York Court to do anything to affect whether or not
19 Entropic can do something. It can't. Entropic is not a
12:19PM 20 party to that case. This is a covenant. It's not what's
21 being asked for.

22 So that is why Your Honor is faced with that issue
23 here.

24 THE COURT: Okay. I need to move on.

12:19PM 25 MR. BRIDGES: Absolutely. I understand,

1 Your Honor.

2 THE COURT: Let me hear, please, from Comcast,
3 Mr. Padmanabhan.

4 MR. PADMANABHAN: Perfect, Your Honor. I think, as
12:19PM 5 Mr. Bridges admitted, we received new cases yesterday evening
6 at 4:30. We promptly read those cases.

7 THE COURT: And what do you want to do about them?

8 MR. PADMANABHAN: They have nothing to do with this
9 case, Your Honor. Okay? That's what I'm going to start
12:19PM 10 with.

11 THE COURT: Okay.

12 MR. PADMANABHAN: What those cases say -- I'm going
13 to start with Air Products. You can look at Pixton. What
14 they say is that if there are state law questions that
12:20PM 15 doesn't rob a Federal Court of subject matter jurisdiction if
16 there are also patent issues. That's what those cases stand
17 for.

18 This is a completely different issue. Remember, we
19 need to start with the framework that this is a covenant not
12:20PM 20 to sue. They can't pass go, okay, because there's -- there's
21 a restriction at the outset. They cannot sue Comcast.

22 One of the things that they said, that Mr. Bridges
23 said, is that, well, we're not required to plead willfulness
24 or show willfulness. That would make the entire covenant
12:20PM 25 empty.

1 The only exemption in that covenant not to sue is
2 if a -- with respect to a particular patent if that
3 particular patent is willfully infringed, then they can sue
4 on that. But this idea that they could just say, well, you
12:21PM 5 infringed patents, that would make the entire covenant empty.
6 That's contrary to New York law which says you can't have a
7 contract provision be illusory.

8 So they haven't addressed that. Actually they
9 don't address that at all in their opposition brief, the fact
12:21PM 10 that their reading of the VSA would render the entire
11 covenant illusory.

12 So I'm not sure what their intention is or what
13 their thinking is in saying the Court would retain subject
14 matter jurisdiction even if they can't plausibly plead
12:21PM 15 willfulness.

16 I think what Your Honor certainly found, correctly,
17 is that given two chances, an original complaint and a first
18 amended complaint, and 60 some odd allegations on
19 willfulness, they were not able to plausibly allege
12:21PM 20 willfulness.

21 So the question, what more is there to do, for them
22 to do? They've had two bites. They've had these patents for
23 years.

24 THE COURT: You're urging me to, if I stick with
12:22PM 25 the tentative, not grant leave to amend because they've

1 already amended?

2 MR. PADMANABHAN: Well, Your Honor, they have
3 already amended. And I don't think --

4 THE COURT: Is that what you're doing?

12:22PM 5 MR. BRIDGES: Your Honor, I would respectfully
6 request that, yeah.

7 THE COURT: Okay. I understand that point.

8 MR. PADMANABHAN: Yeah. So maybe we can take a
9 step back, because Mr. Brings spoke a lot about the
12:22PM 10 relationship between Comcast and MaxLinear and tried to
11 characterize this as some sort of, you know, noncentral part
12 of this agreement.

13 So let's just take a second and talk about who
14 MaxLinear is and who Comcast is, because I think this is
12:22PM 15 worthwhile. This is slide 2, Your Honor. So MaxLinear is --

16 THE COURT: Hold on one second.

17 MR. PADMANABHAN: Yes. Absolutely.

18 THE COURT: Do I have that up here someplace? I
19 have about 400 different documents up here.

12:23PM 20 Okay. Sorry. I have it in front of me. What
21 page?

22 MR. PADMANABHAN: Slide 2, Your Honor.

23 THE COURT: I'm there.

24 MR. PADMANABHAN: Okay. So MaxLinear is one of two
12:23PM 25 major providers of semiconductors in the cable industry.

1 Okay. The other one is Broadcom. And just by way of
2 reference, Your Honor, what's at issue in this lawsuit is
3 they're suing all of these companies over their use of
4 Broadcom chips. Okay. Let's just not have any
5 misconceptions about that.

6 So MaxLinear's semiconductors power devices like
7 these cable gateways and cable modems that go into millions
8 of devices that Comcast deploys in their network and that
9 Comcast relies upon to provide internet service, to provide
10 television service. Okay.

11 And it's only natural -- go to the next slide --
12 that they would come to an agreement where Comcast has
13 assurances that their vendor is going to stand by them, that
14 the vendor is going to stand by their product and do what's
15 necessary to make sure that those products will deliver those
16 high-quality services.

17 Conversely, MaxLinear knows that their industry,
18 their reputation in the industry is going to be upheld, that
19 they're going to stand by their customer. That's the nature
20 of the vendor support agreement.

21 Part of that relationship is this covenant not to
22 sue, right? It's natural a customer wouldn't expect their
23 vendor to sue them, right?

24 If you look at the VSA -- let's go to the next
25 slide -- what it says pretty clearly, Your Honor, is that

1 during the term MaxLinear will not sue Comcast with respect
2 to patent infringement and keeps -- it has this exemption for
3 willfulness.

4 We talked about the timing, and Mr. Bridges said,
12:25PM 5 well, we think that, you know, if you -- he used an analogy.
6 It doesn't have any root in any case law, but he used the
7 analogy: Well, if I let someone come into my house and they
8 steal one thing, well, then, I wouldn't let them come in at
9 all.

12:25PM 10 As Your Honor recognizes in the tentative, willful
11 infringement requires at least two things: knowledge of the
12 patent and knowledge that you're infringing. It's a
13 patent-by-patent analysis. Okay. That -- it only makes
14 sense that this willfulness exemption would apply on a
12:25PM 15 patent-by-patent basis.

16 There is an additional piece of this, okay, which
17 is that -- if we can go to the slide with -- yes, exactly.
18 Go up a little bit to the second part of the covenant.

19 There's an additional piece of this. And,
12:26PM 20 Your Honor, I think in your deck this is going to be -- I
21 apologize. We rearranged these in anticipation. So it's
22 going to be slide 31 of your deck, Your Honor.

23 THE COURT: Okay. I'm there.

24 MR. PADMANABHAN: Yeah. So the second part of the
12:26PM 25 covenant not to sue does allow MaxLinear to pursue other

1 vendors. So they have relief. What they don't have and why
2 this is a subject matter question, they don't have relief
3 against Comcast. They can't sue Comcast. They could go sue
4 Broadcom. They've chosen not to do that, and there's nothing
5 they can do to get around that.

6 So if Entropic were to go back and try to formulate
7 a complaint just alleging infringement without willfulness,
8 that would make the covenant not to sue empty. That's
9 contrary to New York law. They've tried to plead
10 willfulness. They've been unable to do that in two attempts.
11 Okay.

12 So it's not clear what they would replead at this
13 point. They've had the patents for years. And by the way,
14 they have access to MaxLinear's information because
15 MaxLinear, as Your Honor has heard at length in previous
16 lawsuits -- I'm sorry, previous hearings with respect to the
17 Rule 71 issue, MaxLinear is a financial beneficiary in these
18 cases.

19 MaxLinear is working with Entropic. Entropic has
20 access to MaxLinear's information. If there was an
21 allegation of infringement against Comcast, MaxLinear would
22 know; Entropic would know. They could have pled it in any of
23 those two instances, the original complaint and the first
24 amended complaint. They haven't done it.

25 At this point they haven't been able to show the

1 exemption is invoked. There's no basis to allege
2 infringement. They don't have subject matter jurisdiction to
3 allege infringement without a willfulness allegation. We're
4 not sure that there's much left to decide, Your Honor.

12:28PM 5 THE COURT: I'm -- even if I stick with the
6 tentative, I'm not likely to say no leave to amend. I think
7 the law on Rule 15 is pretty clear that Courts should bend
8 over backwards when problems with pleadings are pointed out,
9 bend over backwards to allow a party to replead and try to
12:28PM 10 fix the problem.

11 So I hear you, but that is -- but you may not want
12 to push that point much more.

13 MR. PADMANABHAN: Fully understand, Your Honor.

14 With respect to the tentative, obviously the result
12:28PM 15 that there is no plausible allegation of willfulness, that
16 makes a lot of sense. The fact that, as Your Honor --
17 Your Honor, I think, essentially changed the conclusion in
18 that allowing them to amend denied without prejudice
19 Comcast's 12(b)(1) motion.

12:29PM 20 THE COURT: I can tell you that the disposition is
21 the last thing that I did. And even if I stick with the
22 concepts in the tentative, I'm going to redo that.

23 MR. PADMANABHAN: Understood, Your Honor.

24 THE COURT: And by the way, I know the caption is
12:29PM 25 wrong, too, because it's -- the 1050 case is also against

1 Comcast entities.

2 In any event --

3 MR. PADMANABHAN: Understood, Your Honor. I guess
4 my point is that -- we understand that. It makes sense to
5 us.

12:29PM

6 With respect to the rest of the tentative, I think
7 there is this idea that the timing could be at any time does
8 not make sense.

9 So, for example, could MaxLinear, after entering
10 the VSA, send Comcast a letter saying we think you infringed
11 these patents; the covenant is no longer applicable. That
12 would render it illusory. That's contrary to New York law,
13 which we've cited in our briefing.

12:30PM

14 We've got it up here, Your Honor. And my eyes are
15 going to fail me. I can't read off the prompter, but we
16 cited a number of cases that would say that you couldn't --

12:30PM

17 THE COURT: What page are you on?

18 MR. PADMANABHAN: Let me find it, Your Honor. Give
19 me one moment. So it's page 18, Your Honor, of the slide
20 deck. So this idea -- yes, that one. Correct.

12:30PM

21 So this idea that Entropic could send us a letter
22 or MaxLinear could send Comcast a letter and say, well,
23 you're infringing this patent; the covenant no longer
24 applies, would hold the covenant as being empty, being an
25 illusory promise.

12:31PM

1 That would mean that they never intended to honor
2 the covenant in the first place. That's contrary to New York
3 law. There's no response citing New York law from Entropic
4 on this point.

12:31PM 5 Secondly, a number of their allegations -- and I
6 think Your Honor recognizes this in the tentative -- rely on
7 information that was in their possession at the time they
8 entered the VSA. For example, Comcast's involvement in the
9 MoCA alliance or investment in the legacy Entropic entity in
12:31PM 10 2003 and 2006, those are things that they knew when they
11 entered the VSA.

12 If they expected those things to invoke the
13 exemption, that means that they never intended to honor the
14 covenant to begin with. That's contrary to New York law.

12:31PM 15 The one thing that's really missing, Your Honor,
16 from Entropic's opposition -- and maybe that's why
17 Mr. Bridges wants to sidestep it altogether and, just trying
18 to, you know, give us a lesson on civil procedure as opposed
19 to dealing with the VSA, wants to kick the can on that is
12:32PM 20 because they haven't cited New York law.

21 They haven't addressed the law which would hold
22 that the covenant must have force; it must have been entered
23 with intention. And the only way that they can make it apply
24 -- I'm sorry, that they can get past it is if they can show
12:32PM 25 that the exemption is applicable with respect to a particular

1 patent.

2 They haven't done that.

3 THE COURT: It's got to be done on a
4 patent-by-patent basis.

12:32PM

5 MR. PADMANABHAN: Absolutely, Your Honor.

6 Otherwise it would make no sense. They could submarine an
7 entity. There could be some subsidiary of MaxLinear that
8 we've never heard of that sends us some letter, sends Comcast
9 some letter, and they could, you know, allege infringement on
10 that. And we wouldn't know that this would be even impacting
11 the VSA.

12:32PM

12 What they're saying is that essentially they could
13 hide the information. They could hide the fact that there's
14 an allegation of infringement that impacts the force of this
15 covenant. That can't be right.

12:33PM

16 It's -- the two parties have got to be on all
17 fours. They've got to say, well, look, you're infringing
18 this patent, so the VSA is not applicable. As Your Honor's
19 tentative recognizes, that information should be in
20 MaxLinear's possession. It should be pretty straightforward.
21 And as such, it should be in Entropic's possession.

12:33PM

22 THE COURT: Let me move to a slightly different
23 question. The New York case, does the outcome of the
24 New York case affect this case in any way?

12:33PM

25 MR. PADMANABHAN: So, Your Honor, I don't want to

1 speak for a district court judge in New York, just as I
2 wouldn't presume to speak for any judge. What I'll say is
3 that it appears that the parties in New York are discussing
4 the issue of whether the vendor support agreement continues
12:34PM 5 to be enforced, whether or not Entropic -- sorry. MaxLinear
6 provided a termination letter that we received on May 23rd --
7 whether that termination is actually effective.

8 Now, this Court obviously does not need to decide
9 those issues because there's no subject matter jurisdiction
12:34PM 10 at the outset, and they would need subject matter
11 jurisdiction at the outset in order for this case to
12 continue.

13 That being said, for context the only case that
14 Entropic cites regarding the issue of termination would say
12:34PM 15 that the termination could not be effective for two years and
16 three months.

17 So in New York -- and that is because if you send a
18 termination preemptively or early, under New York law what
19 occurs is that the termination will be effective as of the
12:35PM 20 earliest date allowed under the contract. And under the
21 contract there's a requirement essentially that there be a
22 year notice before the statement of work is canceled or
23 terminated and then a further one year and three months of
24 notice from the termination of the last statement of work
12:35PM 25 before the VSA can be terminated.

1 So that totals two years and three months.

2 THE COURT: So let's say MaxLinear prevails in
3 New York and gets a judgment in its favor. Are you saying
4 there's no effect on this case because that judgment would
12:35PM 5 essentially provide that the VSA is not terminated until two
6 years and three months from the date of the initiation of the
7 SDNY lawsuit?

8 MR. PADMANABHAN: So let me break it down,
9 Your Honor. I apologize. We've been trying to go very
12:36PM 10 quickly. So --

11 THE COURT: My question is pretty simple.

12 MR. PADMANABHAN: Right.

13 THE COURT: Say MaxLinear wins in New York.

14 MR. PADMANABHAN: Right.

12:36PM 15 THE COURT: What does that do to this case, if
16 anything?

17 MR. PADMANABHAN: I'm getting there, Your Honor.
18 My apologies.

19 So it appears that MaxLinear's view of what
12:36PM 20 constitutes winning in New York would be termination sometime
21 before that two years and three months.

22 When that is, is subject to the Court in the
23 Southern District of New York. What we would submit, what
24 Comcast would submit is that in the meantime there's no basis
12:36PM 25 for Entropic to hold Comcast hostage in this litigation where

1 what Comcast has as of today is a covenant not to sue that's
2 in force, that's in effect. That keeps them from passing go.
3 It keeps them from starting the case because we can't be
4 sued.

12:36PM 5 THE COURT: I understand you're saying that, but
6 put that aside for a moment. Again, MaxLinear wins in
7 New York on MaxLinear's theories, which I guess necessarily
8 does not include your two-year, three-month issue. MaxLinear
9 wins --

12:37PM 10 MR. PADMANABHAN: Right.

11 THE COURT: -- on all its theories.

12 MR. PADMANABHAN: Right. Your Honor, at that point
13 we would say that Entropic would come back. At that point if
14 they were to win and the vendor support agreement is
12:37PM 15 terminated, then the covenant not to sue is not in place and
16 then Entropic has a basis to file a lawsuit against Comcast.
17 But that's not today. That's what I'm trying to say. I hope
18 that's clear.

19 THE COURT: And if that happens, what is affected
12:37PM 20 is the period of infringement, the period that damages would
21 accrue, again assuming Entropic prevails on its patent
22 infringement?

23 MR. PADMANABHAN: I want to be careful here, Your
24 Honor. I want to answer your question, but I also want to
12:38PM 25 make I'm not -- that it's not taken out of context later. So

1 we would say that Entropic does not -- does not have subject
2 matter jurisdiction until that vendor support agreement is
3 terminated. So that's step one.

4 But, yes, that would also impact the damages
12:38PM 5 period. But they don't get to even file a case against us
6 until that termination is effected.

7 THE COURT: I understand your position. That's
8 helpful.

9 Okay. I kind of took us aside. What else? I
12:38PM 10 really need to wrap this up.

11 MR. PADMANABHAN: Absolutely, Your Honor. I
12 actually think that -- you know, before we close out, let's
13 just talk about the issue of -- if we can go to the Dobrova
14 case. So this idea -- and I want to just make sure our
12:38PM 15 record is clear on this because the briefing is very clear.

16 Mr. Bridges got up and he said that -- and this
17 actually, Your Honor, is not in the deck. We added it in
18 response to your tentative this morning, but the cases are
19 cited in our briefing.

12:39PM 20 So Mr. Bridges got up and he said, without citing
21 any case law, he said, well, you know, we think you could --
22 the timing of when a willfulness allegation doesn't matter.
23 But that's not what the present perfect tense means. We
24 found New York case law dead on point. They have no
12:39PM 25 response. They haven't responded with any case law

1 interpreting contract language under New York law.

2 So the case law says that this phrase means it's
3 got to be an allegation of willful infringement before the
4 VSA was entered. That makes sense, because the whole point
12:39PM 5 of the vendor support agreement is a vendor and its customer
6 coming together and saying we're going to work together and
7 we'd like to keep the peace.

8 So it's consistent with both the law and it's
9 consistent with the pragmatic consideration that Mr. Bridges
12:40PM 10 raised, although not discussing the specificity of the two
11 parties.

12 So with that, Your Honor, I'll take my seat.

13 THE COURT: Okay. Thank you very much. You've
14 given me a lot to think about.

12:40PM 15 Do you want to -- does Comcast want to file a
16 supplemental brief in response to all these new cases that
17 Entropic has now called to my attention? I mean, I need to
18 get this right. If there's -- if there are -- if there is
19 case law that points us, points me in the right direction, I
12:41PM 20 need to consider them.

21 MR. PADMANABHAN: Yeah, exactly.

22 THE COURT: Do you want to file a brief in
23 response?

24 MR. PADMANABHAN: You know, Your Honor, let me make
12:41PM 25 a comment which I probably should have done at the lectern.

1 I'll return to the lectern for a moment, because one thing
2 that Mr. Bridges said, he said, well, they talk about DJ
3 cases, and then we realized the DJ cases are wrong as well.

4 No. What we said about the declaratory judgment
12:41PM 5 cases was that their characterization of those cases was
6 wrong. They read the declaratory judgment cases as saying
7 that unless a covenant has no exceptions, it does not take
8 away subject matter jurisdiction. That is not what those
9 cases say.

12:41PM 10 What those cases say in each of those instances, as
11 Mr. Bridges noted, a patentholder who's a declaratory
12 judgment defendant gave a covenant not to sue in order to try
13 and get out of the litigation. Then that covenant not to sue
14 had a gaping hole in it. Okay. It did not apply.

12:42PM 15 In this case there's no reasonable argument that
16 this covenant not to sue does not apply to each of the 20
17 patents in this case. The only way that they would not apply
18 is if Entropic could plausibly allege willfulness with
19 respect to one of those patents, which they cannot.

12:42PM 20 THE COURT: You're not answering my question.

21 MR. PADMANABHAN: Yeah.

22 THE COURT: Do you want to file a supplemental
23 brief?

24 MR. PADMANABHAN: I apologize, Your Honor. We
12:42PM 25 don't know what they actually have said about those cases.

1 We heard Mr. Bridges, but they haven't actually sought leave
2 or explained why those cases --

3 THE COURT: Is that a no?

4 MR. PADMANABHAN: I just don't know what I would be
12:42PM 5 filing a supplemental brief on, Your Honor.

6 THE COURT: Let me ask Entropic.

7 Do you want to file a supplemental brief now that
8 you've found these cases?

9 MR. BRIDGES: I mean, if it's helpful to

12:42PM 10 Your Honor, particularly with subject matter jurisdiction,
11 the Court has to get it right. I would prefer Your Honor to
12 be in possession of more information than less, so we're
13 happy to do that.

14 If Comcast is absolutely against it, it seems to me
12:43PM 15 that perhaps the most rational thing to do, Your Honor, would
16 be to say to the parties: You can have a couple of pages. I
17 mean, this should be fairly short and to the point, and then
18 maybe they respond to what we said.

19 THE COURT: Yes. So this is an important issue.
12:43PM 20 It's a constitutional issue of standing. It's kind of how I
21 view it. Well, it's how Comcast has teed it up. So I need
22 to get it right, so why don't -- why doesn't Entropic file a
23 five-page -- is five pages sufficient?

24 MR. BRIDGES: I think that's absolutely adequate,
12:43PM 25 Your Honor.

1 THE COURT: Five-page supplemental brief by -- how
2 quickly can you get it? A week from Friday?

3 MR. BRIDGES: That's no problem at all, Your Honor.

4 THE COURT: So deadline of August 18th for
5 Entropic's supplemental brief hopefully explaining these
6 eight cases and why you think they're relevant.

7 And then is two weeks sufficient, Mr. Padmanabhan?

8 MR. PADMANABHAN: Absolutely, Your Honor.

9 THE COURT: So that's September 1st, deadline for
10 response of supplemental brief. I'll call it that. And then
11 that's it.

12 MR. PADMANABHAN: That would be great, Your Honor.

13 THE COURT: So I'll refrain from deciding this
14 motion until I get those supplemental briefs. Okay.

15 MR. PADMANABHAN: Thank you, Your Honor.

16 THE COURT: Thank you. Now I'm not going to take
17 any more argument this.

18 Let's move to the scheduling conferences. I need
19 to set a claim construction schedule. I'm thinking of it as
20 the MoCA cases on the one hand and the cable cases on the
21 other hand. I think you have provided me with Rule 26(f)
22 reports along those lines.

23 Let me talk about the MoCA cases first. I'm
24 looking at ECF 106 filed in the 1048 case. I'm not sure why
25 I'm looking at this particular one.

1 MR. BRIDGES: Yes. I'm sorry to -- I just want to
2 make sure that the date -- because your tentative has a date
3 in it of August 25th --

4 THE COURT: To amend.

12:45PM 5 MR. BRIDGES: To amend. That's not in effect until
6 Your Honor gets these new cases and issues an order; is that
7 correct?

8 THE COURT: Of course.

9 MR. BRIDGES: Okay. I just wanted to confirm,
12:45PM 10 Your Honor. Thank you.

11 THE COURT: If -- let's say for the sake of
12 argument I'm inclined to stick with the concept of the
13 tentative. As you've heard, I'm almost certainly going to
14 give Entropic leave to amend, to fix what I have perceived in
12:45PM 15 the tentative as a pleading problem with respect to
16 willfulness.

17 I'll give you a couple weeks to fix it, and I'll
18 give Comcast probably three weeks to file its response,
19 either an answer or whatever.

12:46PM 20 Okay. So claim construction. You've provided me
21 with a schedule in both cases. In both cases you've given me
22 the same schedule. I mean, Entropic wants a relatively
23 quicker schedule and defendants want a more relaxed schedule.

24 I think something in the middle makes sense. You
12:46PM 25 know what? This is what I'm going to do. Something in the

1 middle makes sense. I'm looking at the last date. Claim
2 construction hearing, plaintiff wants February 27th of next
3 year and defendants want October 22nd of next year.

4 I'm going to turn this back to you. Meet and
12:46PM 5 confer and pick dates that are in between those two that you
6 can agree to for all of these events. I do not want the MoCA
7 and cable cases to proceed on exactly the same dates. Have
8 at least a six-week, if not two-month, delta between them. I
9 don't really care.

12:47PM 10 I don't think I care which one goes first, MoCA or
11 cable, but meet and confer and give me agreed-upon dates for
12 all these activities. You have enough guidance?

13 MS. GOODRICH: Yes, Your Honor. I think the one
14 point that we would like to make on behalf of Entropic is
12:47PM 15 that the MoCA cases be the trailing cases since there is that
16 new DirecTV case that we'd like to consolidate in. I know
17 Your Honor has moved that status conference, which we will be
18 addressing.

19 THE COURT: When is that status conference?

12:47PM 20 MS. GOODRICH: I think it's September 8th,
21 Your Honor.

22 THE COURT: Okay. Who is the defendant again?

23 MS. GOODRICH: DirecTV, among others. That's the
24 lead defendant, and they're still retaining outside counsel.

12:48PM 25 THE COURT: Just go to the lectern.

1 That was going to be my next question. To
2 Entropic's knowledge, has DirectTV retained counsel for that
3 case? Yes or no?

4 MS. GOODRICH: No.

12:48PM

5 THE COURT: Okay. Do defendants in the MoCA cases
6 have any objection to the cable cases going first for claim
7 construction? That's a yes-or-no question.

8 MR. PADMANABHAN: Your Honor, so I'll speak on
9 behalf of Comcast.

12:48PM

10 THE COURT: I understand.

11 MR. PADMANABHAN: We actually would prefer for the
12 MoCA cases to go first. I know that's the exact opposite of
13 what Your Honor was hoping to hear. Let me -- let me explain
14 why, which is, the cable cases -- look, a lot of this is
15 going to be discovery spats and such. Cable cases have a
16 fewer number of folks involved, Cox and Comcast.

12:48PM

17 We just don't want the tail wagging the dog a
18 little bit if MoCA is sort of the major show. So our thought
19 is that the cable cases would go second.

12:49PM

20 THE COURT: Okay.

21 MR. SHARTZER: Your Honor, may I address on behalf
22 of DISH?

23 THE COURT: Yes, please.

24 MR. SHARTZER: DISH would prefer that the MoCA
25 cases go after the cable cases. In particular, we would like

12:49PM

1 to see DirecTV have enough time to catch up so that all the
2 cases are consolidated together.

3 MS. ISAACSON: Your Honor, if I may on behalf of
4 Cox, we agree with the position that was just set forth by
12:49PM 5 DISH, that the MoCA cases go second.

6 THE COURT: Okay.

7 MR. PADMANABHAN: Your Honor, I think I've been
8 overruled by my brethren.

9 THE COURT: Well, the issue that Ms. Goodrich
12:49PM 10 raised, I agree with. If at all possible, I'd like these
11 cases to travel together. So please meet and confer, pick a
12 claim construction schedule with all of these events
13 somewhere in between -- that yields a claim construction
14 hearing in between February 27th of next year and
12:50PM 15 October 22nd of next year.

16 Cable cases will go first. MoCA cases will trail
17 by, like I said, six weeks, two-months "ish." Hopefully --
18 what is DirecTV's deadline to respond to the complaint?

19 MS. GOODRICH: August 28th.

12:50PM 20 THE COURT: And I'm talking about the newest case.

21 MS. GOODRICH: Yes, Your Honor.

22 THE COURT: August 28th?

23 MS. GOODRICH: Yes, Your Honor.

24 THE COURT: And September what is the scheduling
12:50PM 25 conference?

1 MS. GOODRICH: I believe it's September 8th,
2 Your Honor.

3 THE COURT: All right. Well, hopefully DirecTV
4 will retain counsel soon so DirecTV can meaningfully
12:51PM 5 participate in the discussion about case schedules.

6 How soon can you file a stipulation in the cable
7 cases for a claim construction schedule?

8 Everybody is here; that is, everybody is before the
9 Court.

12:51PM 10 MS. GOODRICH: I would say within a week, if not
11 less.

12 MR. PADMANABHAN: That should be fine. I mean,
13 we're just deciding a schedule, so it should be fine.

14 THE COURT: Deadline of August 18th for the parties
12:51PM 15 in the cable cases to file a stipulation for a claim
16 construction schedule. Like I said, the events that you've
17 identified are fine. The relative time between events in
18 general is fine. Just pick a final date that's between that
19 February 27th and October 22nd date.

12:52PM 20 MS. ISAACSON: Yes, Your Honor. Thank you.

21 THE COURT: Okay. And then I will see -- everybody
22 involved in the MoCA cases, are you all coming to the
23 September 8th scheduling conference, or is that just Entropic
24 and DirecTV? I have forgotten where we are.

12:52PM 25 MS. GOODRICH: It's just Entropic and DirecTV,

1 Your Honor.

2 THE COURT: Okay. Well, my hope is when we have
3 that scheduling conference, those two sets of parties can
4 represent on behalf of everybody in the MoCA cases that
12:52PM 5 you've reached a consensus on a case schedule that will trail
6 the cable cases case schedule.

7 MS. GOODRICH: Understood, Your Honor.

8 THE COURT: All right. I really need to get going.
9 What else do we need to accomplish here today?

12:53PM 10 MR. PADMANABHAN: We had one point of
11 clarification, Your Honor. So based on your tentative and
12 the posture of the Comcast case, we understood that there is
13 no discovery in that case pending resolution of the 12(b)(1)
14 issue.

12:53PM 15 THE COURT: There's no jurisdictional discovery.

16 MR. PADMANABHAN: Okay. Understood, Your Honor.

17 THE COURT: Well, that's what the tentative said.

18 MS. GOODRICH: If I may, Your Honor, discovery has
19 been open for weeks now. We did serve discovery on Comcast
12:53PM 20 that is directed to some of the issues raised in the motion
21 to dismiss.

22 Those responses are also due on August 28th. We're
23 hoping that we get responses and documents which might inform
24 the supplemental briefing. If not, amendment if that's
12:53PM 25 necessary.

1 MR. PADMANABHAN: Your Honor, as you can guess, our
2 position is that they're fishing for some basis to allege
3 willfulness, which they should have put in the original
4 complaint.

12:54PM

5 THE COURT: Okay. Well, I'm not going to rule on
6 that. The status quo is what it is in terms of discovery.
7 I'm not ruling -- I don't think I need to say any more than
8 that. If you refuse to respond and there's a discovery
9 dispute, I'm sure that that will bubble up through the
10 Special Master.

12:54PM

11 Is the Special Master here? Yes. Mr. Kaiser, good
12 to see you. So you got say two words. That's good. On the
13 record. It's good to see you here, though. I appreciate it.

12:54PM

14 So that's an issue for you to deal with if that
15 happens. Mr. Kaiser, do you want any more guidance on that
16 right now?

17 MR. KAISER: No, Your Honor.

18 THE COURT: Okay. That's three more words.

12:55PM

19 And again I'm teasing Mr. Kaiser. I'm very happy
20 that he's involved in this case, and I appreciate his
21 service.

22 Okay. What else do we have to deal with today?

12:55PM

23 MS. GOODRICH: Your Honor, just to circle back to
24 something we deal with at the end. You asked if the MoCA
25 standard was in the record. It is attached to the claim

1 charts to the MoCA complaints at Exhibit 4, P and R.

2 THE COURT: Exhibit 4 P --

3 MS. GOODRICH: Excuse me. Exhibits B, P as in
4 Paul, and R to the complaints.

12:55PM 5 THE COURT: Exhibits Bravo, Papa, and Romeo?

6 MS. GOODRICH: Yes.

7 THE COURT: To the complaints in the MoCA cases?

8 MS. GOODRICH: Correct, with claim charts with
9 definitions of the network coordinator citing the MoCA
10 standard.

12:55PM 11 THE COURT: Got it. Okay. Good. Thank you. That
12 answers that question.

13 What else do we need to accomplish today?

14 MS. GOODRICH: Nothing from plaintiff, Your Honor.

12:56PM 15 MS. ISAACSON: Nothing from Cox, Your Honor.

16 MR. PADMANABHAN: Nothing from Comcast, Your Honor.

17 MR. SHARTZER: Nothing from DISH, Your Honor.

18 THE COURT: Okay.

19 Counsel, thank you all very much. I enjoy this

12:56PM 20 case. I will take, of course, all the motions that are
21 pending under submission. I've made -- my minute order
22 memorializing this hearing will reflect the briefing schedule
23 that we talked about and reflect my request that you file
24 those stipulations for the claim construction schedules.

12:56PM 25 I appreciate all of the briefing. Oh, I think --

1 unless I get pushback, I think that each of you should lodge
2 your slides that you've provided to me with the Court. Any
3 objection to that?

4 MS. GOODRICH: No, Your Honor.

12:57PM 5 MR. PADMANABHAN: Your Honor, we'll lodge our
6 slides. There may be a couple of additions, but they're what
7 we presented, just because between your tentative and this
8 morning and the cases we got last night. So we added some
9 slides beyond what we handed to you.

12:57PM 10 THE COURT: Were these slides -- I know there was
11 one slide that was displayed to me that was added.

12 MR. PADMANABHAN: I think there's one or two slides
13 that were displayed to you.

14 THE COURT: Okay. If it was displayed to me, you
12:57PM 15 may lodge that. If it wasn't displayed to me, don't lodge
16 that, but you can -- that pertains to the supplemental
17 briefing, right? So you can include it with your
18 supplemental briefing.

19 MR. PADMANABHAN: Thank you, Your Honor.

12:57PM 20 THE COURT: Okay. Any other pushback on lodging
21 slides?

22 MS. ISAACSON: Not from Cox, Your Honor.

23 MR. SHARTZER: Not from DISH, Your Honor.

24 THE COURT: Okay.

12:57PM 25 Mr. Kaiser, anything that you wanted to -- anything

1 we need to cover?

2 MR. KAISER: No. Thank you. I do note --

3 THE COURT: Why don't you step up to the lectern.

4 MR. KAISER: Your Honor, I don't think this needs

12:58PM

5 to be resolved today, but I did note in the 26(f) reports
6 there were some disagreements about the number of hours for
7 depositions, interrogatories, and so forth. So I will await
8 guidance from the Court, assuming that no issue comes up in
9 the meantime.

12:58PM

10 THE COURT: I think disputes -- I'm not going to
11 rule on any of that. I think disputes over those issues can
12 go to you first.

13 MR. KAISER: Understood.

14 THE COURT: And then if the parties don't like your
15 decision, there's a mechanism for getting my attention on
16 that. Thank you for raising that.

12:58PM

17 There was one other question I had. The number of
18 limitations that will be in dispute on the cable cases and on
19 the MoCA cases, we didn't talk about that.

12:59PM

20 I didn't see it in your Rule 26(f) reports, but
21 maybe I missed it.

22 MR. PADMANABHAN: Your Honor said the number of
23 limitations. You mean the number of claims?

24 THE COURT: Well, number of limitations to be
25 construed --

12:59PM

1 MR. PADMANABHAN: Oh, I see.

2 THE COURT: -- is what I mean. I think we started
3 out with about ten in the previous iteration, and we were
4 down to seven or eight or so. That was workable from my
12:59PM 5 perspective.

6 Do you have any idea at this point? I mean, there
7 are a lot patents in suit in the MoCA cases and in the cable
8 cases. I -- so I'm not going to make a decision now. I'm
9 throwing that out to you. In your stipulation that you
12:59PM 10 submit to me with a schedule, please include a limit on the
11 number of limitations to be construed.

12 MR. SHARTZER: Your Honor, if I may address that
13 point on behalf of DISH.

14 THE COURT: Please.

01:00PM 15 MR. SHARTZER: We have not received a list of
16 asserted claims from Entropic, so it makes that exercise
17 quite difficult without the context of just how large this
18 case is going to be, starting with 12 asserted patents.

19 So if there were a procedure whereby Entropic could
01:00PM 20 provide its list of asserted claims in the MoCA case, that
21 would certainly be helpful to the defendants. At least I'll
22 represent that on behalf of DISH.

23 MR. PADMANABHAN: I think that's the same for
24 Comcast as well.

01:00PM 25 MS. ISAACSON: Agree for Cox as well.

01:00PM 1 MS. GOODRICH: Your Honor, I believe that we had
2 proposed dates as part of our schedule, so I would just wrap
3 that into the meet and confer that the parties are going to
4 have with respect to the revised schedule, and we would
5 include a date for that.

01:00PM 6 MR. SHARTZER: And, Your Honor, I think the point
7 here is that just simply having to make a guess at how many
8 claims should be construed, the defendants are in no position
9 to make that guess or reach an agreement without at least an
10 identification of the asserted claims in this case.

01:01PM 11 Entropic represents in its 26(f) briefing that it's
12 ready to serve its contentions and its list of asserted
13 claims this Friday. So we believe that Entropic does that
14 information, that it is ready to go, and it could be provided
15 to both the defendants and the Court in the process for
16 establishing the procedures and the size of the claim
17 construction hearing.

01:01PM 18 THE COURT: Okay. Well, meet and confer over it.
19 Hopefully you can reach a consensus on the number of
20 limitations that will be in dispute. If it turns out by the
21 time you file your stipulation with me that you cannot from
22 the defendant's perspective commit to any -- to limit the
23 number of limitations, say that.

01:01PM 24 MR. SHARTZER: Thank you, Your Honor.

01:01PM 25 THE COURT: I'll deal with it, you know, as it

comes.

MR. SHARTZER: Right. Thank you.

THE COURT: Okay. Anything else?

All right. Counsel, thank you very much. Special Master, thank you very much. I'll see some of you on September 8th, and I look forward to receiving all the documents that we talked about you filing with me.

Thank you.

(Proceedings concluded at 1:02 p.m.)

CERTIFICATE

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY RECORDED PROCEEDINGS IN THE ABOVE MATTER.
FEES CHARGED FOR THIS TRANSCRIPT, LESS ANY CIRCUIT FEE REDUCTION AND/OR DEPOSIT, ARE IN CONFORMANCE WITH THE REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

/s/ Miriam V. Baird

08/17/2023

MIRIAM V. BAIRD
OFFICIAL REPORTER

DATE

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